

#### LODI CITY COUNCIL

Carnegie Forum 305 West Pine Street, Lodi

#### **AGENDA – REGULAR MEETING**

**Date:** March 5, 2008

Time: Closed Session 5:45 p.m.

Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl City Clerk Telephone: (209) 333-6702

<u>NOTE</u>: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

#### C-1 Call to Order / Roll Call

#### C-2 Announcement of Closed Session

- a) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Cross-Claim by Lima Dairy Against City of Lodi Based on Alleged Nitrate Contamination at White Slough; <u>Coldani v.</u> Lima Dairy, US District Court, ED Cal Case No. 2:07-CV-00660- RRB-EFB
- b) Conference with Dean Gualco, Human Resources Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), Regarding Association of Lodi City Employees Regarding General Services Pursuant to Government Code §54957.6
- c) Prospective Sale of Real Property Located at 500 S. Guild Avenue, Lodi, CA (APN 049-250-61); the Negotiating Parties are City of Lodi and GG Land Group LLC.; Government Code §54956.8

#### C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

- C-4 Return to Open Session / Disclosure of Action
- A. Call to Order / Roll call
- **B.** Invocation Pastor Kevin Suess, Vinewood Community Church
- C. Pledge of Allegiance
- D. Presentations
  - D-1 Awards None
  - D-2 Proclamations
    - a) Arbor Day (PW)
  - D-3 Presentations
    - a) Presentation of San Joaquin Council of Governments' Regional Excellence Award to Cellar Door Wineries

#### E. Consent Calendar (Reading; Comments by the Public; Council Action)

- E-1 Receive Register of Claims in the Amount of \$11,989,577.86 (FIN)
- E-2 Approve Minutes (CLK)
  - a) February 19, 2008 (Shirtsleeve Session)
  - b) February 20, 2008 (Regular Meeting)
  - c) February 26, 2008 (Shirtsleeve Session)

- E-3 Approve Scope of Work for Transit Operations Contract and Authorize Advertisement for Request for Proposals (GrapeLine, VineLine, and Dial-A-Ride) (PW)
- E-4 Approve Specifications and Authorize Advertisement for Bids for 25,000 Feet of #4/0 AWG, 15kV, EPR Insulated, Jacketed Concentric Neutral Underground Cable (EUD)
- E-5 Approve Specifications and Authorize Advertisement for Bids for Maintenance of the Lodi Consolidated Landscape Assessment District 2003-1, Fiscal Year 2008-09 (PW)
- Res. E-6 Adopt Resolution Authorizing the Sole Source Procurement of Remote Terminal Units and Accessories from Geo Honn Company, Inc., of Vacaville, CA, for Henning and Industrial Substations (not to exceed \$60,000) (EUD)
- Res. E-7 Adopt Resolution Awarding the Professional Services Contract to Auriga Corporation, of Milpitas, California, to Perform Siting Work for the West 60kV Transmission Project and Appropriate Funds (not to exceed \$34,000) (EUD)
- Res. E-8 Adopt Resolution Approving a One-Year Extension of the Tree Trimming 2007 Contract with West Coast Arborists, Inc., of Stockton (\$53,000) (PW)
- Res. E-9 Adopt Resolution Approving Professional Services Agreement with Rolfes Engineering, Inc., of Stockton, for Engineering Design Services and Construction Administration for Library Heating, Ventilation, and Air Conditioning (\$42,640) (PW)
- Res. E-10 Adopt Resolution Authorizing the City Manager to Execute Reimbursement Agreement with North San Joaquin Water Conservation District for City Administrative Services Provided to the District (PW)
  - E-11 Authorize City Manager to Execute Agreement with InfoSend, Inc., of Fullerton, CA, for Online Payment Services (Est. \$35,000/Year) (CM)
  - E-12 Accept Memorial Bench, Tree, and Plaque Donation from Friends of Jeannie Matsumoto in Honor of Suzanne Matsumoto (PW)

#### F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

#### G. Comments by the City Council Members on Non-Agenda Items

#### H. Comments by the City Manager on Non-Agenda Items

#### I. Public Hearings

- Res. I-1 Public Hearing to Consider and Approve Community Input and Proposals for Uses of the City's 2008-09 Federal Allocation of Community Development Block Grant and HOME Program Funds and the Reallocation of Available Funds from Previous Program Years (CD)
- Res. I-2 Public Hearing to Adopt Federal Fiscal Year 2008 Program of Transit Projects (PW)

#### J. Communications

- J-1 <u>Claims Filed Against the City of Lodi</u> None
- J-2 Appointments
  - a) Appointments to the Lodi Arts Commission (CLK)
- J-3 <u>Miscellaneous</u> None

#### K. Regular Calendar

- K-1 Presentation of Proposed Art in Public Places Art Piece on the Northwest Corner of Lodi Avenue and Washington Street by Artist Jerrod Mays (CD)
- K-2 Receive Progress Report on the City of Lodi General Plan Update (CM)
- K-3 Adopt Revised Fleet Policy (PW)
- Res. K-4 Adopt Resolution Amending Memorandum of Understanding Between the City of Lodi and the Lodi City Mid-Management Association for the Period of January 1, 2008 through December 31, 2009 (CM)
- Res. K-5 Adopt Resolution Approving Compensation Adjustment for Unrepresented Mid-Managers (CM)
- Res. K-6 Adopt Resolution Approving City's Internet Website Policy (CM)
  - K-7 City Council Participation in Review of Applicants for Police Chief and Public Works Director (CM)
  - K-8 Approve Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$183,932.95) (CA)
- L. Ordinances None

#### M. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl	
City Clerk	



AGENDA TITLE: Arbor Day Proclamation

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION:** Present a proclamation proclaiming Arbor Day in the City of Lodi.

**BACKGROUND INFORMATION:** Staff would like to invite the Mayor, the City Council, and the

City Manager, to this year's Arbor Day Celebration. This year's event will be held on Friday, April 4, 2008, 8:00 a.m. to 10:00 a.m., at Vinewood School. Vinewood School students will be planting

trees at the school, participating in a poster contest, and enjoying other associated activities.

This year's celebration is being organized by the Public Works Department and jointly-funded by the Electric Utility, Community Development, and Parks and Recreation Departments; the Streets and Drainage Division; Waste Management; Wal-Mart; Lodi Unified School District; and West Coast Arborists, along with help from Tree Lodi.

#### **Arbor Day's Beginnings**

On January 4, 1872, Julius Sterling Morton first proposed a tree-planting holiday, to be called "Arbor Day", at a meeting of the State Board of Agriculture. The date was set for April 10, 1872. It was estimated that more than one million trees were planted in Nebraska on the first Arbor Day.

Arbor Day was officially proclaimed by Governor Robert W. Furnas on March 12, 1874, and the day itself was observed April 10, 1874. In 1885, Arbor Day was named a legal holiday in Nebraska, and April 22<sup>nd</sup>, Morton's birthday, was selected as the date for its permanent observance. During the 1870s, other states passed legislation to observe Arbor Day and the tradition began in schools nationwide in 1882. Arbor Day has now spread beyond the United States and is observed in many countries of the world.

Lodi has been designated as a Tree City USA for a sixth consecutive year. This designation affords us preference over other communities for grant money for trees or forestry programs and gives us an enhanced public image as a city that cares about its trees.

In the City of Lodi, trees are very important. The celebration of Arbor Day gives an opportunity to learn about trees and take positive action to make the world a better place.

FISCAL IMPACT:	Not applicable.		
FUNDING AVAILABLE:	Not applicable.		
		Richard C. Prima, Jr. Public Works Director	
Prepared by George M. Bradley, Stree RCP/GMB/RF/dsg cc: D. Stephen Schwabauer, City Steve Dutra, Interim Parks & F Ray Fye, Tree Operations Sup	Attorney Recreation Director		
	APPROVED:		

Blair King, City Manager



AGENDA TITLE:	Presentation of to Cellar Door	of San Joaquin Council of Governments' Regional Excellence Award Wineries
MEETING DATE:	March 5, 2008	3
PREPARED BY:	City Manager	
RECOMMENDED A	CTION:	Mayor Mounce to present the San Joaquin Council of Governments' (SJCOG) Regional Excellence Award to representatives of the Cellar Door wineries.
BACKGROUND INFO	ORMATION:	At the SJCOG Regional Excellence Awards dinner on February 22, Mayor Mounce accepted the Regional Excellence Award for leadership to the City of Lodi for the Cellar Door project. In order to publicly recognize this outstanding achievement, Mayor Mounce will present this award to representatives of the Lodi wineries.
FISCAL IMPACT:	N/A	
FUNDING AVAILABI	LE: N/A	
		Blair King City Manager
BK/jmp		
	APPROVED	): Blair King, City Manager





AGENDA TITLE:	Receive Register of Claims Dated February 7, and February 14, 2008 in the Total Amount of \$11,989,577.86				
MEETING DATE:	March 5, 200	08			
PREPARED BY:	Financial Se	rvices Manager			
RECOMMENDED AC	CTION:	Receive the attached Register of Claims for \$11,989,577.86.			
BACKGROUND INFO	ORMATION:	Attached is the Register of Claims in the amount of \$11,989,577.86 dated 02/07/08, and 02/14/08. Also attached is Payroll in the amount of \$1,479,753.66.			
FISCAL IMPACT:	n/a				
FUNDING AVAILABL	<b>.E</b> : As pe	er attached report.			
RRP/rp Attachments		Ruby R. Paiste, Financial Services Manager			
	APPROVE	D:Blair King, City Manager			

		Accounts Payable Council Report	Page Date	- 1 - 02/19/08
Thursday		Name	Amount	
02/07/08	00100		1 067 005 40	
	00160	Electric Utility Fund	9,288,994.81	
	00161	Utility Outlay Reserve Fund	10,277.79	
	00164	Public Benefits Fund	3,171.22	
	00166	Solar Surcharge Fund	3,171.22 17,668.00	
		Waste Water Utility Fund	12 <b>,</b> 114.21	
	00172	Waste Water Capital Reserve	169,445.68	
	00180	Water Utility Fund	3,799.12	
	00181	Water Utility Fund Water Utility-Capital Outlay	12,950.04	
	00182	IMF Water Facilities	1 <b>,</b> 976.75	
	00210	Library Fund	4,640.02	
	00260	Internal Service/Equip Maint		
		Employee Benefits	42,479.27	
		General Liabilities	31,733.95	
		Worker's Comp Insurance	42 <b>,</b> 728.92	
		Gas Tax	4,145.06	
	00329	TDA - Streets	5 <b>,</b> 397.33	
	00338	IMF-Regional Transportation	17,993.35	
		Comm Dev Special Rev Fund		
		Lcr Assessment 95-1	260.25	
		SJC Facilities Fees-Future Dev		
	01211	Capital Outlay/General Fund	470.70	
		Parks & Rec Capital	129.30	
	01218	IMF General Facilities-Adm	10,642.72	
	01250	Dial-a-Ride/Transportation	5,702.11	
	01410	Expendable Trust	14,238.75	
Sum			10,701,434.25	
	00184	Water PCE-TCE-Settlements	210.00	
	00190	Central Plume	185.00	
Sum			395.00	
Total for	Week			
Sum			10,701,829.25	

As of Thursday	Fund	Accounts Payable Council Report Name		- 1 - 02/19/08
02/14/08	00100	General Fund	153,194.09	
	00123	Info Systems Replacement Fund	245.36	
	00130	Redevelopment Agency	859.41	
	00160	Electric Utility Fund	5,470.50	
	00161	Utility Outlay Reserve Fund	404.06	
	00164	Public Benefits Fund	8,091.20	
	00170	Waste Water Utility Fund	9,129.20	
	00172	Waste Water Capital Reserve	557,570.53	
	00180	Water Utility Fund	2,580.36	
	00181	Water Utility-Capital Outlay	59.59	
	00182	IMF Water Facilities	780.00	
	00210	Library Fund	5,771.91	
	00234	Local Law Enforce Block Grant	1,996.04	
	00235	LPD-Public Safety Prog AB 1913	60.85	
	00260	Internal Service/Equip Maint	29,310.50	
	00270	Employee Benefits	420,852.42	
	00300	General Liabilities	40.00	
	00321	Gas Tax	14,023.92	
	00325	Measure K Funds	4,056.30	
	00340	Comm Dev Special Rev Fund	199.75	
	01218	IMF General Facilities-Adm	20,241.26	
	01250	Dial-a-Ride/Transportation	17,722.84	
	01410	Expendable Trust	31,054.80	
Sum			1,283,714.89	-
	00190	Central Plume	4,033.72	
Sum			4,033.72	
Total for	Maals			•
Sum	week		1,287,748.61	

		(	Council Report for Payroll	Page Date	- 1 02/19/08
Payroll	Pay Per Date	Со	Name		Gross Pay
Regular	02/10/08	00160 00164 00170 00180 00210 00235 00260 00321 00340	General Fund Electric Utility Fund Public Benefits Fund Waste Water Utility Fund Water Utility Fund Library Fund LPD-Public Safety Prog AB 1913 Internal Service/Equip Maint Gas Tax Comm Dev Special Rev Fund Dial-a-Ride/Transportation	3	1,010,688.66 172,262.63 5,208.75 88,675.50 1,510.08 36,838.18 4,227.77 19,193.15 55,571.94 35,668.41 3,114.56
Pay Period Sum Retiree		00100	General Fund		1,432,959.63 46,794.03
Pay Period Sum	Total:				46,794.03

#### AGENDA ITEM E-02



AGENDA TITLE:	Approva) a) b) c)	Febru	ates ary 19, 2008 (Shirtsleeve Session) ary 20, 2008 (Regular Meeting) ary 26, 2008 (Shirtsleeve Session)
MEETING DATE:	March	5, 2008	8
PREPARED BY:	City Cl	erk	
RECOMMENDED A	CTION:	Approal) a) b) c)	ve the following minutes as prepared: February 19, 2008 (Shirtsleeve Session) February 20, 2008 (Regular Meeting) February 26, 2008 (Shirtsleeve Session)
BACKGROUND INF	ORMAT	ION:	Attached are copies of the subject minutes, marked Exhibits A through C.
FISCAL IMPACT:		None.	
FUNDING AVAILAB	SLE:	None	required.
			Randi Johl City Clerk
RJ/JMP			
Attachments			
	AF	PPROV	/ED: Blair King. City Manager

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#### CITY OF LODI INFORMAL INFORMATIONAL MEETING "SHIRTSLEEVE" SESSION CARNEGIE FORUM, 305 WEST PINE STREET TUESDAY, FEBRUARY 19, 2008

The February	19, 2008	3, Informal	Informational	Meeting	("Shirtsleeve"	Session)	of the	Lodi	City	Council	was
canceled.											

ATTEST:

Randi Johl City Clerk

# LODI CITY COUNCIL REGULAR CITY COUNCIL MEETING CARNEGIE FORUM, 305 WEST PINE STREET WEDNESDAY, FEBRUARY 20, 2008

#### C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of February 20, 2008, was called to order by Mayor Mounce at 6:00 p.m.

Present: Council Members - Hansen, Hitchcock, Johnson, Katzakian, and Mayor Mounce

Absent: Council Members - None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

#### C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual Litigation: Government Code §54956.9(a); One Case; <u>County of San Joaquin v. City of Stockton et al.</u>, San Joaquin County Superior Court, Case No. CV029651
- b) Conference with Dean Gualco, Human Resources Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), Regarding Lodi City Mid-Management Association Pursuant to Government Code §54957.6

#### C-3 ADJOURN TO CLOSED SESSION

At 6:00 p.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:58 p.m.

#### C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:04 p.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), the City Council unanimously approved the proposed settlement agreement with the County of San Joaquin.

Item C-2 (b) was discussion only.

#### A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of February 20, 2008, was called to order by Mayor Mounce at 7:04 p.m.

Present: Council Members - Hansen, Hitchcock, Johnson, Katzakian, and Mayor Mounce

Absent: Council Members - None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

#### B. <u>INVOCATION</u>

The invocation was given by Ken Owen, Christian Community Concerns.

#### C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Mounce.

#### D. AWARDS / PROCLAMATIONS / PRESENTATIONS

- D-1 Awards None
- D-2 Proclamations None
- D-3 (a) Megan Connors and Lee Kraljev, representing the Greater Lodi Area Youth Commission, gave an update on the Commission's activities and accomplishments.

#### E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Johnson, Hitchcock second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$3,991,774.41.
- E-2 The minutes of January 16, 2008 (Regular Meeting), February 5, 2008 (Shirtsleeve Session), February 6, 2008 (Regular Meeting), and February 12, 2008 (Shirtsleeve Session) were approved as written.
- E-3 Accepted the quarterly report of purchases between \$5,000 and \$20,000.
- E-4 Approved specifications and authorized advertisement for bids for portable self contained vacuum excavation unit.
- E-5 Approved specifications and authorized advertisement for bids for self-propelled mini digger derrick.
- E-6 Adopted Resolution No. 2008-18 approving the purchase of medium-duty equipment lift from Stertil-KONI, of Stevensville, MD, in the amount of \$43,368.80, using the California Multiple Award Schedules Purchasing Contract No. 4-07-49-0014A.
- E-7 "Adopt Resolution Awarding the Contract for Residential Water Meter Installation Project (Phase 2) to Petersen Construction, Inc., of Reno, NV (\$13,048)" was removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.
- E-8 "Adopt Resolution Rejecting the Low Bid and Awarding the Contract for the Acceptance Testing and Commissioning of the Killelea Substation Rehabilitation Project to Power Testing and Energization, Inc., of Vancouver, Washington, and Authorizing the City Manager to Approve Change Orders up to \$30,000 (\$148,592)" was removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.
- E-9 Adopted Resolution No. 2008-19 authorizing the City Manager to execute a Third Phase Agreement with Northern California Power Agency for the Western Geothermal, Inc. Renewable Energy Project.
- E-10 Authorized the Deputy City Manager/Treasurer to enter into agreement with Farmers and Merchants Bank of Central California for the issuance of a City credit card for Interim Police Chief David Main.
- E-11 Adopted Resolution No. 2008-20 approving the Improvement Deferral Agreement for the Victor Road Improvements for Archer Daniels Midland, 350 North Guild Avenue, and authorizing the City Manager and City Clerk to execute the agreement on behalf of the City.
- E-12 Adopted Resolution No. 2008-21 authorizing the City Manager to enter into contracts to purchase replacement granular activated carbon for dibromochloropropane (DBCP) treatment at City drinking water wells for 2008 in the amount of \$247,800.
- E-13 "Adopt Resolution Authorizing the City Manager to Execute Agreement with City of Elk Grove Regarding Its Purchase of Compressed Natural Gas from City of Lodi at Municipal Service Center Fueling Station" was *removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar*.

- E-14 Adopted Resolution No. 2008-22 approving East Lodi Avenue Reconstruction for Proposition 1B (Transportation Bond) funding.
- E-15 Adopted Resolution No. 2008-23 authorizing the City Manager to file an amended claim for 2007-08 Transportation Development Act funds in the amount of \$3,019,423 from Local Transportation Fund and \$20,049 from State Transit Assistance.
- E-16 Adopted Resolution No. 2008-24 approving application for rubberized asphalt concrete chip seal gant from California Integrated Waste Management Board and authorizing the City Manager to execute grant agreements.
- E-17 "Approve Removal of Three Trees at 1345 West Kettleman Lane in Conjunction with Animal Shelter Arts Project" was *removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar*.
- E-18 "Adopt Resolution Authorizing Supplemental Funds from the Parks and Recreation Impact Fee Account Toward the Current Restroom Improvements at Henry Glaves Park and Beckman Park (\$30,000)" was removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.
- E-19 Set Public Hearing for March 5, 2008, to consider and approve community input and proposals for uses of the City's 2008-09 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years.
- E-20 Set Public Hearing for March 5, 2008, to adopt Federal Fiscal Year 2008 Program of Transit Projects.
- E-21 Set Public Hearing for March 19, 2008, to consider resolution approving new rates for solid waste collection.

#### ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

E-7 "Adopt Resolution Awarding the Contract for Residential Water Meter Installation Project (Phase 2) to Petersen Construction, Inc., of Reno, NV (\$13,048)"

This item was pulled for further discussion by Mayor Pro Tempore Hansen.

In response to Mayor Pro Tempore Hansen, Mr. Prima and Mr. Sandelin confirmed that it is a good time to install as many meters as possible in light of the favorable price of \$13,000 and they anticipate doing the same.

In response to Mayor Pro Tempore Hansen, Mr. Prima stated the current phase will not be completed until spring and they will continue to work with the bidder to get the maximum amount of meters installed.

In response to Council Member Johnson, Mr. Prima stated the \$13,000 is the original bid amount and may cover the entire amount of 680 meters based on contingency.

#### MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hansen, Johnson second, unanimously adopted Resolution No. 2008-25 awarding the contract for Residential Water Meter Installation Project (Phase 2) to Petersen Construction, Inc., of Reno, NV, in the amount of \$13,048, and authorizing the City Manager to extend the contract to allow up to 86 additional meters to be installed.

E-8 "Adopt Resolution Rejecting the Low Bid and Awarding the Contract for the Acceptance Testing and Commissioning of the Killelea Substation Rehabilitation Project to Power Testing and Energization, Inc., of Vancouver, Washington, and Authorizing the City Manager to Approve Change Orders up to \$30,000 (\$148,592)"

This item was pulled for further discussion by City Attorney Schwabauer.

City Attorney Schwabauer stated he would like the resolution to be amended to include the liability provision for the contractor's maximum insured coverage to apply and change the choice of law provision to California.

#### MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hansen, Johnson second, unanimously adopted Resolution No. 2008-26, as revised by the City Attorney, rejecting the low bid and awarding the contract for the Acceptance Testing and Commissioning of the Killelea Substation Rehabilitation Project to Power Testing and Energization, Inc., of Vancouver, Washington, in the amount of \$148,592, and authorizing the City Manager to approve change orders up to \$30,000.

E-13 "Adopt Resolution Authorizing the City Manager to Execute Agreement with City of Elk Grove Regarding ts Purchase of Compressed Natural Gas from City of Lodi at Municipal Service Center Fueling Station"

This item was pulled for further discussion by Council Member Hitchcock.

City Manager King provided a brief presentation stating that the city of Elk Grove is compensating the City of Lodi for its use of the Municipal Services Center (MSC). He stated the community will likely see green buses with Elk Grove markings fueling at the facility.

#### MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Johnson second, unanimously adopted Resolution No. 2008-27 authorizing the City Manager to execute agreement with city of Elk Grove regarding its purchase of compressed natural gas from City of Lodi at MSC fueling station and to extend the agreement, if necessary.

E-17 "Approve Removal of Three Trees at 1345 West Kettleman Lane in Conjunction with Animal Shelter Arts Project"

This item was pulled for further discussion by Council Member Hitchcock.

City Manager King provided a brief overview of the existing policy for the City Manager to approve the removal of trees within the City. He stated Council consideration is sought regarding the subject tree removal because it may obscure the view of a potential site for an art piece.

In response to Mayor Mounce, Mr. Prima stated he did not believe the proposed dog run would be affected by the tree removal and the project timing allows for staff to work around the dog run if necessary.

Council Member Hitchcock stated she will not support the recommendation because trees are a vital part of the community. She stated the trees can be removed at a later date after the art mural is completed if it is determined that the view is obstructed.

The President and Treasurer of People Assisting Lodi Shelter spoke regarding their concerns of the fencing, which may be affected if the trees are not removed, possible obstruction of the view of the mural, the need to have a 15-foot fence set back, and the positioning of the current trees.

#### MOTION / VOTE:

The City Council, on motion of Council Member Johnson, Hansen second, approved the removal of three trees at 1345 West Kettleman Lane in conjunction with Animal Shelter arts project. The motion carried by the following vote:

Ayes: Council Members - Hansen, Johnson, Katzakian, and Mayor Mounce

Noes: Council Members – Hitchcock Absent: Council Members – None

E-18 "Adopt Resolution Authorizing Supplemental Funds from the Parks and Recreation Impact Fee Account Toward the Current Restroom Improvements at Henry Glaves Park and Beckman Park (\$30,000)"

This item was pulled for further discussion by Council Member Hitchcock.

In response to Council Member Hitchcock, Mr. King stated Proposition 12 and Proposition 40 funds are both based on per capita allocations. He stated the nexus requirements are met because the proposed project is an expansion project and will spend down money from the funds as required.

Interim Parks and Recreation Director Steve Dutra provided an overview of the proposed park restroom expansion project. In response to City Attorney Schwabauer, Mr. Dutra stated the facilities are expanding in size by a minimum of one stall per facility. Mr. Schwabauer stated that, while impact fees cannot be used for existing improvements, they can be used for expansion projects and he is comfortable with the recommended action.

#### MOTION / VOTE:

The City Council, on motion Council Member Hitchcock, Katzakian second, unanimously adopted Resolution No. 2008-28 authorizing supplemental funds from the Parks and Recreation Impact Fee Account toward the current restroom improvements at Henry Glaves Park and Beckman Park in the amount of \$30,000.

#### F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Rebecca Wallace, Wal-Mart Store Manager, presented the World of Wonders Science Museum with a donation of \$25,000.
- Frank Beeler provided an overview of the Salmonid Restoration Conference to be held at Hutchins Street Square on March 5-8, 2008, and invited everyone to attend.

#### G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Johnson stated the City Council has not received a salary adjustment in 18 years and requested the matter be placed on a future agenda.
- Mayor Pro Tempore Hansen reported on his attendance at two commission meetings and an Executive San Joaquin Council of Governments' meeting. He specifically discussed the Smart Growth fund, Law and Legislative Committee agenda, California climate control, AB 32, and greenhouse gas emission concerns.

#### H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

• City Manager King reported that the City recently received two San Joaquin Awards for Excellence related to the wine industry.

#### I. PUBLIC HEARINGS

None.

#### J. <u>COMMUNICATIONS</u>

- J-1 Claims Filed Against the City of Lodi None
- J-2 The following postings/appointments were made:
  - a) The City Council, on motion of Mayor Mounce, Hitchcock second, unanimously made the following appointments and reappointments to various boards and commissions:

Lodi Senior Citizens Commission

Terri Whitmire Term to expire December 31, 2011
Tracy Williams Term to expire December 31, 2011

San Joaquin County Mosquito & Vector Control District

Jack Fiori Term to expire December 31, 2009

Site Plan and Architectural Review Committee

Roger Stafford Term to expire January 1, 2012 Reyes H. Jaramillo Term to expire January 1, 2012

J-3 Miscellaneous - None

#### K. REGULAR CALENDAR

K-1 "Receive Report Regarding Status of Mokelumne River Bank in the General Vicinity of Pigs Lake within Lodi Lake Park Nature Area"

City Manager King provided a brief introduction of the subject matter of the Mokelumne River Bank as it relates to Pigs Lake within Lodi Lake.

Interim Parks and Recreations Director Steve Dutra provided a brief presentation and specifically discussed the location and description of the project, site conditions, erosion areas, report findings from an engineering firm, and the proposed scope of work.

In response to Mayor Pro Tempore Hansen, Mr. Dutra stated there may have been some grants previously available that came with several conditions. He stated they are continuing to look at partnering with other agencies to follow a variety of processes, including permitting, and are also working with grant writer John Brody. Mayor Pro Tempore Hansen also suggested looking at the Army Corps of Engineers for possible assistance.

In response to Council Member Hitchcock, Mr. Prima stated the four to ten foot erosion occurred between 1994 and the present. He stated in 1994 the erosion level was approximately 100 linear feet and now it is about four times that amount.

In response to Council Member Hitchcock, Mr. Prima stated that many factors go into the amount and levels of erosion of the embankment including swift water release, which causes the fastest erosion.

In response to Council Member Hitchcock, Mr. Prima stated some draft information may be made available to the County Board of Supervisors. Mr. King stated staff is actively looking for other funding sources and in doing so will bring back to the Council a resolution of support, which can be forwarded to other agencies.

In response to Council Member Johnson, Mr. Prima stated it is important to look at what specifically the City needs to fix the problem before going to an agency. A brief discussion ensued between Mayor Mounce, Mayor Pro Tempore Hansen, Mr. Prima, and Mr. King regarding prior discussion for improvements at Pigs Lake, the type of improvements that were made previously, and the ability to obtain assistance from agencies that control the waterways.

Discussion ensued between Council Member Hitchcock and Mr. Prima regarding the sense of emergency associated with repairing the embankment due to erosion, statistical data to support the improvements, previous efforts to stack trees against the riverbank, soil erosion near the trees resulting in a loss of the riverbank, and taking a look at other solutions.

In response to Council Member Johnson, Mayor Pro Tempore Hansen stated the County did not consider the item a priority previously; although, there may have been some enforcement efforts by the Sheriff's Department and Lodi Police Department monitoring activity and patrolling the river in general.

Ann Cerney stated she recalled some previous discussion regarding State funding opportunities and requirements for the same.

Council Member Hitchcock suggested it may be appropriate to limit all but passive water craft on the river. Mr. King stated staff will prepare some information regarding erosion levels, along with a resolution of support to submit to the County, and will bring the entire matter back to Council for consideration and direction.

#### MOTION / VOTE:

No Council action was taken on this matter.

K-2 "Presentation of Electric, Water, and Wastewater Utility First and Second Quarter (Fiscal Year 2007-08) Financial Reports"

Electric Utility Director George Morrow provided a PowerPoint presentation regarding the quarterly electric utility financial reports. Specific topics of discussion included highlights, second quarter (Q2) projected and actual numbers, fiscal year 2008 budget, electric expenses by series, Q2 power supply, sales, weather, Q2 billing statistics, Northern California Power Agency (NCPA) general operating reserves, energy cost adjustment (ECA) billing statistics, open position, cash balance, and summary.

Mayor Mounce requested copies of comparisons of ECA and tier levels that are utilized in other communities. Council Member Hitchcock stated that, while the Council has received similar documentation before, she would not mind looking at it again.

Discussion ensued between Council Member Hitchcock and Mr. Morrow regarding electric expenses by series, the amounts listed for the mid-year budget, and actual expenses. Mr. Morrow stated they are currently approximately 20% under budget.

In response to Council Member Hitchcock, Mr. Morrow stated the line item of other payments may include internal transfers of funds and charges to and from other departments. He stated the second half of the year may be higher on that type of internal adjustments.

In response to Council Member Hitchcock, Mr. Morrow stated the non-power supply savings, which are generally personnel related costs, may increase by the end of the year. He stated that, while the savings may not be sustainable in the long run, it does provide short-term cost savings.

In response to Council Member Hitchcock, Mr. Morrow stated that overall costs should be controllable by the end of the year.

Discussion ensued between Mayor Mounce and Mr. Morrow regarding ECA usage, rate effect on residents who conserve, financial rating application, and comparisons regarding other communities who utilize the ECA and tiering system.

In response to Council Member Hansen, Mr. Morrow confirmed the 4 to 1 ratio for ECA application.

In response to Council Member Johnson, Mr. Morrow stated that the ECA was incorporated to temper larger increases over time.

In response to Council Member Johnson, Mr. Morrow stated the Roseville money will be left in a reserve fund per Council policy. Mr. Morrow stated that, while the money remains under the City's control, the NCPA prefers to see that money located where it is for financial stability purposes on both the City and NCPA sides.

In response to Council Member Katzakian, Mr. Morrow confirmed that the savings on the non-power side does not affect NCPA. Mr. Morrow provided a brief overview of the ECA and specifically discussed the lack of forecasting with an ECA, sharing with Seattle, the concept of electricity being used in the summer and returned in the winter, and the affect of the same on monthly billings.

Discussion ensued between Council Member Hitchcock and Mr. Morrow regarding attendance at an American Public Power Agency conference to understand the ECA concept, the level of reserves with NCPA, and the need to build additional reserves and protect future investments.

Mayor Mounce requested further clarification of the ECA concept and copies of comparables with other communities who utilize the ECA system. Mr. King stated staff will provide additional information as requested.

#### **RECESS**

At 9:05 p.m., Mayor Mounce called for a recess, and the City Council meeting reconvened at 9:16 p.m.

#### K. REGULAR CALENDAR (Continued)

K-2 Deputy City Manager Krueger provided a PowerPoint presentation regarding the quarterly (Cont'd.) water and wastewater financials. Specific topics of discussion included a summary of the water and wastewater funds, quarterly financials for both funds ending December 2007, and operating expenses by series for both funds.

Discussion ensued between Council Member Hitchcock and Mr. Krueger regarding capital projects funded to other sources than Certificates of Participation, the status of improvements or projects that are not being completed or falling behind, and conservative projections of \$28.5 million.

In response to Mayor Mounce, Mr. King stated that, with respect to sewer and water replacement projects in the older parts of town, they are continuing to look at infrastructure improvements after the PCE/TCE settlements are taken care of and will be bringing the matter for Council consideration at an upcoming Shirtsleeve Session.

Ann Cerney spoke of her concern regarding the in-lieu transfers. A brief discussion ensued between Ms. Cerney, Council Member Hitchcock, Council Member Johnson, and Mr. King regarding listing specific services for water and wastewater rates, transfers related to the electric rates and general funds, funding provided to shareholders for benefit of services, the possibility of increasing reserves, the formula for in-lieu transfers being based on services and not gross sales, and the cost of services study performed by Muni Financial related to said transfer.

In response to Council Member Hitchcock, Mr. Prima stated he does not have the specific numbers showing the savings and benefit associated with the electric utility as it relates to the water and wastewater funds. Mr. Prima stated they did have a savings from the White Slough improvements.

Mayor Mounce requested information regarding the utility cost savings be provided to the Council along with the ECA documentation.

#### MOTION / VOTE:

No Council action was taken on this matter.

K-3 "Adopt Resolution Amending Memorandum of Understanding between the City of Lodi and the International Brotherhood of Electric Workers for the Period January 1, 2008 through December 31, 2011"

Deputy City Manager Krueger provided a brief overview of the proposed Memorandum of Understanding (MOU) as provided in the agenda packet.

#### MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hansen, Mounce second, adopted Resolution No. 2008-29 amending MOU between the City of Lodi and the International Brotherhood of Electric Workers for the period January 1, 2008 through December 31, 2011. The motion carried by the following vote:

Ayes: Council Members - Hansen, Johnson, Katzakian, and Mayor Mounce

Noes: Council Members – Hitchcock Absent: Council Members – None

K-4 "Adopt Resolution Amending Memorandum of Understanding between the City of Lodi and the Lodi Police Dispatchers Association for the Period November 6, 2007 through April 30, 2011"

Deputy City Manager Krueger provided a brief overview of the proposed Memorandum of Understanding (MOU) as provided in the agenda packet.

In response to Council Member Johnson, Mr. Krueger stated the enhanced retirement benefits was a part of the Council discussion and staff made it very clear to all the bargaining units that they are not making any changes to retirement benefits. Mr. Krueger stated similar language is not in the other MOUs.

In response to Mayor Pro Tempore Hansen, Mr. Krueger stated the proposed MOU does not enhance the current retirement benefit and there is no discussion with any of the groups about doing the same.

Council Member Hitchcock stated she cannot support the recommendation based on her concerns regarding the three-year term of the contract, the ability to pay increases, and the tie in to the salary surveys.

Council Member Johnson stated he cannot support the recommendation because he does not recall having a discussion regarding enhanced retirement benefits.

#### MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hansen, Mounce second, adopted Resolution No. 2008-30 amending MOU between the City of Lodi and the Lodi Police Dispatchers Association for the period November 6, 2007 through April 30, 2011. The motion carried by the following vote:

Ayes: Council Members – Hansen, Katzakian, and Mayor Mounce

Noes: Council Members - Hitchcock and Johnson

Absent: Council Members - None

K-5 "Adopt Resolution Establishing Policy for the Ranking of Community Development Block Grant Applications"

City Manager King briefly introduced the subject matter.

Community Improvement Manager Joseph Wood provided a PowerPoint presentation regarding establishing a policy for the ranking of Community Development Block Grant (CDBG) applications. Specific topics of discussion included community-based organization application ranking system, scoring categories, Option A and example, Option B, miscellaneous issues to consider, and possible Council action regarding the same.

In response to Council Member Hitchcock, Mr. Wood confirmed that applicants would still need to meet the general criteria discussed at the Shirtsleeve Session and provide supporting documentation.

In response to Council Member Hitchcock, Mr. Wood stated the bonus points would allow brick and mortar projects to go above 100 points with a 20 point differential. Council Member Hitchcock stated she would like to see how the 20 points may make a difference on an application.

In response to Council Member Hitchcock, Mr. Wood stated the biggest difference between Options A and B is that it may not consider the public service requests received this year. Mr. King provided an overview of the history of bringing about options for CDBG allocations and recommendations regarding the same.

In response to Mayor Pro Tempore Hansen, Mr. Wood stated the Meals on Wheels program is a public service project. Discussion ensued between Mayor Pro Tempore Hansen, Mr. Wood, and Mr. King regarding limiting the ability to assist worthy public service projects, awareness of affected organizations of the policy change, contact with organizations since the Shirtsleeve Session, and limitations on administrative support service requests.

In response to Council Member Johnson, Mr. Wood stated the applications have yet to be graded; although, under Option B, five applications may be bumped.

Council Member Johnson suggested utilizing the original recommendation as proposed a few weeks earlier for the current year. Council Member Hitchcock stated she could support the same and suggested revising the criteria before next year to include the 40% allocation, with Option B, and sticking with capital improvement projects.

Salvation Army Lt. Dan Williams stated the Salvation Army projects have always been brick and mortar; although, there may be a need for other projects. He agreed that additional changes other than the 60-40 split should be incorporated in future years and not the current year.

Mr. King stated staff will allocate the funding as requested predicated on the list submitted by Community Development a few weeks ago.

#### MOTION / VOTE:

The City Council, on motion of Council Member Johnson, Hansen second, unanimously supported the original staff recommendation as proposed at the previous Council meeting at which the item was discussed based on a straight 60-40 split for the current year.

K-6 "Presentation and Recommendation Regarding Allowance of Parking of Class A Light Duty Tow Trucks, Which are on the Lodi Police Rotational Tow List, in Residential Areas in Advance of a Proposed Ordinance"

City Manager King briefly introduced the subject matter.

Interim Police Chief David Main provided an overview of the possible parking of Class A Light Duty Tow Trucks, which are on the Lodi Police rotational tow list, in residential areas. Specific topics of discussion included general background, standard rotational requests, problems, and staff recommendation regarding ordinance changes for the same.

In response to Council Member Hitchcock, Chief Main stated that, while the response times do not appear to be a problem, the department will occasionally receive complaints from citizens about tow trucks being parked on the street.

In response to Council Member Hitchcock, Chief Main stated that, while the drivers may have the ability to park outside of the tow yard for a quicker response, they may not want to do the same for safety and theft reasons.

In response to Mayor Pro Tempore Hansen, Chief Main confirmed that the proposed policy would be effective 24 hours a day.

In response to Council Member Johnson, Chief Main stated staff can meet with the tow companies to come up with a compromise regarding rotating tow trucks so that a truck is not parked in a single location for an extended period of time.

In response to Council Member Katzakian, Mr. King stated staff can look into having some sort of an on-call rotational list.

In response to Council Member Johnson, Chief Main stated resident tows are much more frequent than larger recreational vehicle tows.

Council Member Hitchcock stated she does not see a current need for the policy at night and the tow truck yards are open during the day.

In response to Mayor Mounce, Chief Main stated the current policy has not been actively enforced and they have received a single complaint. He stated staff can come up with a solution contractually with the tow companies.

In response to Mayor Pro Tempore Hansen, Chief Main stated currently there may be between four and six trucks parked on the streets.

Mr. King stated staff will continue to look into internal options to address the matter.

#### MOTION / VOTE:

No Council action was taken on this matter.

K-7 "Approve Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation and Various Other Cases being Handled by Outside Counsel (\$30,510.66)"

In response to Council Member Hitchcock, City Attorney Schwabauer stated the Benchmark Video and Bridge City costs are related to depositions.

#### MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Johnson second, unanimously approved the expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel in the amount of \$30,510.66, as detailed below:

#### Folger Levin & Kahn - Invoices Distribution

Matter	Invoice				Water Acct.	
No.	No.	Date	Description		Amount	
8002	106606	12/31/07	City v. M & P Investments		\$ 12,558.10	
				Total	\$ 12 558 <b>10</b>	

#### Kronick Moskovitz Tiedemann & Girard - Invoices Distribution

Matter No.	Invoice No.	Date	Description		100	0351.7323
11233.026	236856	01/25/08	Lodi First v. City of Lodi		\$	4,139.49
11233.029	236856	01/25/08	AT&T v. City of Lodi		\$	397.80
11233.030	236856	01/25/08	Water Supply Issues		\$	1,128.00
				Total	\$	5,665.29
			MISCELLANEOUS			
Invoice					Wa	ter Acct.
No.	Date	Description	n		Α	mount
71185	11/01/2007	Bridge Cit	y Legal		\$	2,391.38
71332	12/01/2007	Bridge Cit	y Legal		\$	1,699.40
105018	12/01/2007	San Franc	cisco Legal	\$	615.57	
880001	12/01/2007	Harry A. C	Harry A. Cannon			1,629.09
831	12/01/2007	Benchmai	Benchmark Video			1,059.25
880801	01/01/2008	Harry A. C	Harry A. Cannon		\$	1,932.08
839	12/01/2007	Benchmai	rk Video		\$	<u>1,310.50</u>
				Total	\$ 1	10,637.27
		JAI	MS Mediation Services			
					Wa	ter Acct.
					Α	mount
0001398647	'-110	1/31/2008	State of Calif. v. M&P In	vestments		<u>\$</u>
<u>1,650.00</u>				Total	\$	1,650.00
				iotai	Ψ	1,000.00

#### L. <u>ORDINANCES</u>

None.

#### M. <u>ADJOURNMENT</u>

There being no further business to come before the City Council, the meeting was adjourned at 10:51 p.m.

ATTEST:

Randi Johl City Clerk

#### CITY OF LODI INFORMAL INFORMATIONAL MEETING "SHIRTSLEEVE" SESSION CARNEGIE FORUM, 305 WEST PINE STREET TUESDAY, FEBRUARY 26, 2008

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, February, 26, 2008, commencing at 7:01 a.m.

#### A. ROLL CALL

Present: Council Members - Hitchcock, Johnson, Katzakian, and Mayor Mounce

Absent: Council Members – Hansen

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

#### B. <u>TOPIC(S)</u>

B-1 "Presentation of the Semi-Final Report with Regard to the Merger of Hutchins Street Square/Parks and Recreation"

City Manager King provided a brief introduction to the subject matter regarding a potential merger of Hutchins Street Square and Parks and Recreation.

Community Center Director Jim Rodems provided a PowerPoint presentation regarding the subject matter. Specific topics of discussion included executive summary, conclusion, findings, contributing factors, National City Survey, who was consulted, work product, potential organizational charts, various budgeting options, transition plan, separation of departments, and recommendations regarding the same.

In response to Mayor Mounce, Mr. Rodems stated the community forum was attended by approximately 15 to 20 people.

In response to Myrna Wetzel, Mr. Rodems stated the previous community forum was held at 6:00 p.m. in the library and an additional one is planned for March.

In response to Council Member Johnson, Mr. Rodems stated that the salary figures were arrived at by comparing current City salary figures for like or similar positions.

In response to Mayor Mounce, Mr. Rodems stated the potential administrative clerk salary reduction may be looked at in conjunction with what jobs are assigned to what levels and corresponding support. Mr. King stated it is important to note that currently the director position does not come with a secretarial support position.

In response to Mayor Mounce, Mr. Rodems stated the draft report will be taken out to the various interested groups. He stated the City Council was provided a clean copy before any changes are made as a result of the additional comments that may be received.

Council Member Hitchcock requested a copy of the current organizational charts and salaries for the Hutchins Street Square and Parks and Recreation Departments.

In response to Council Member Hitchcock, Parks Project Coordinator Steve Virrey stated the current position handles projects and construction drawings and works with the Public Works Department on in-house projects.

Discussion ensued between Council Member Hitchcock, Mr. Rodems, and Mr. King regarding the possibility of an additional layer of management to manage a larger, single structure, reducing two director positions into a single position, efficient services and communication with the community at large, the need for effective program budgeting, maintenance and building services for both of the existing departments, fee generation and tax subsidy associated with the \$1.4 million figure, and the service provided by existing and proposed staffing levels.

In response to Council Member Hitchcock, Mr. King confirmed that the proposed salary figure is total compensation. Mr. King also briefly explained the current salaries for the Hutchins Street Square and Park and Recreation Directors, stating there was an opportunity to review organizational structures in light of the vacancy of a Parks and Recreation Director.

Further discussion ensued between Mayor Mounce, Mr. Rodems, and Mr. King regarding additional cost references in the proposed budget and total salary amounts.

In response to Mayor Mounce, Mr. Rodems stated the proposed budget does not include software costs, which may already be in place without full utilization.

In response to Council Member Hitchcock, Mr. Rodems stated art-related classes fall under a recreational function and can be offered in a similar fashion. He stated the Arts Commission would continue to operate and function in its existing capacity due to everything else that may be under its purview.

In response to Council Member Hitchcock, Mr. Rodems stated the Recreation Commission may be expanded to ensure representation from both the arts and senior citizens aspect. Mr. King stated the community would benefit from a stronger Recreation Commission representing various interests; although, the groups may continue to function individually as well in light of other subject matters under their purview. Mr. Rodems also provided an overview of the concept associated with program protection in relation to space.

In response to Mayor Mounce, Mr. King stated staff did not specifically look at the best service provider when comparing cities that were 50,000 to 75,000 in population. Mr. Rodems stated cities were basically compared for nomenclature purposes, and internal process from city to city varies based on community needs.

In response to Council Member Johnson, Mr. Rodems stated that, while the market may be considered, fees are primarily based on costs to provide the service, program goals, the ability to generate revenue, and accessibility of the service.

Discussion ensued between Council Member Johnson, Mr. Rodems, and Mr. King regarding subsidizing youth programs, recovery with adult programs, different ways to generate the proposed income number for balance purposes, Council consideration of program budgets, cost levels driven by participation, and the level of subsidy amounts.

In response to Kathy Grant, Mr. Rodems stated a full-time position may be needed for Lodi Lake if the program needs require additional support. He stated that, while revenues may increase from the Lake being open all year, so may the costs associated with the same.

In response to Council Member Katzakian, Mr. Rodems stated that a full-time position may be warranted if Lodi Lake is open all year round.

In response to Council Member Johnson, Mr. King stated the item will be coming back to Council for consideration after comment is received from the various groups in approximately two to three weeks. Mayor Mounce requested the various groups be contacted and have representation at the Council meeting at which the item is again discussed.

#### C. <u>COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS</u>

None.

#### D. ADJOURNMENT

No action was taken by the City Council. The meeting was adjourned at 8:07 a.m.

ATTEST:

Randi Johl, City Clerk



AGENDA TITLE: Approve Scope of Work for Transit Operations Contract and Authorize

Advertisement for Request for Proposals (GrapeLine, VineLine and Dial-A-Ride)

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Approve the Scope of Work for the Transit Operations contract and

authorize staff to advertise for Request for Proposals (RFP).

**BACKGROUND INFORMATION**: The City's transit program began in January 1978 with a Dial-A-Ride

type service through a contract with the local taxi company. The system was designed to meet the needs of seniors, disabled and economically disadvantaged persons who were unable to travel by

car. The City took over the Dial-A-Ride program in September 1992 and added its Fixed Route service in November 1994. In 1996, the entire operation was contracted to a specialized provider. Services are

currently provided by a contract with MV Public Transportation, Inc.

The City of Lodi's current contract is five years old and has expired. It is time to re-bid the contract. In addition to the current scope of work, the proposal will include ADA service reporting and tracking, computerized dispatching and the requirement that all proposed Contractor employees be fingerprinted and pass a background check before they are eligible to drive under the contract. In addition to the Scope of Work, the RFP documents will require the submittal of references, experience, and a wage and benefits schedule. The RFP will be evaluated for "Best Value", which includes reviewing management, training, accident history and staffing, in addition to price. The proposals will include a flat monthly charge for administration and dispatch, plus an hourly rate per vehicle revenue hour. The contract term shall be for four years, with two one-year extensions possible. Staff has included in the RFP the current pay scale and benefits package and calls for a minimum starting salary that is to be no less than \$1.00 lower than the existing starting salary. Setting the minimum pay levels has assisted in retaining and recruiting drivers.

The issuance of the RFP for Transit Operations in Lodi also coincides with the timing for release of the RFP for services covering the City of Galt. Staff has met with the City of Galt and is bringing forward the idea of bidding the two services concurrently with an optional bid to allow for one contractor to provide both services. By issuing the optional bid, the Cities would allow for joint management, staffing and oversight of the contracts which is anticipated to result in reduced costs for both systems. In addition, the concurrent management of the services should facilitate ease in reporting requirements associated with the federal funding we receive. Currently, data on Galt's services is prepared by their contractor, submitted to Galt and then submitted to us. If the two systems utilized the same contractor, staff would have direct access to all applicable data. A copy of the RFP is on file in the Public Works Department. The RFP is scheduled to be released March 7<sup>th</sup>, with proposals due on April 9<sup>th</sup>. Staff intends to bring this item back to the City Council at the first meeting in May for award.

\DDD\\/ED.		
APPROVED: _		
	Blair King, City Manager	

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Approve Scope of Work for Transit Operations Contract and Authorize Advertisement for Request for Proposals (GrapeLine, VineLine and Dial-A-Ride)
March 5, 2008
Page 2

FISCAL IMPACT: This agreement will allow the City of Lodi to claim and receive Federal

Transit Administration funding. These funds will pay for on-going

operations and upcoming capital needs. Without a new contract, Federal funding can not be utilized for operations. The current contract amount is

approximately \$1.8 million per year and varies with the hours of service being provided. Staff believes that contracting the service provides the best value to the City. Transit service is very specialized and having a contractor who can share overhead expenses (such as training, operation support and technology changes) with their other contracts is a benefit. Other than specialized districts, very few cities directly operate their own transit service.

**FUNDING AVAILABLE**: Funding for this Transit Operations contract will be from Transportation

Development Act (TDA) and Federal Transit Administration (FTA) funds.

Richard C. Prima, Jr.
Public Works Director

Prepared by Tiffani M. Fink, Transportation Manager

RCP/TMF/pmf

cc: Transportation Manager

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**AGENDA TITLE:** Approve Specifications and Authorize Advertisement for Bids for 25,000 Feet of #4/0 AWG, 15kV, EPR Insulated, Jacketed Concentric Neutral Underground Cable (EUD) **MEETING DATE:** March 5, 2008 PREPARED BY: **Electric Utility Director** Approve the specifications and authorize advertisement for bids for 25,000 RECOMMENDED ACTION: feet of #4/0 AWG, 15kV, EPR insulated, Jacketed Concentric Neutral underground cable. BACKGROUND INFORMATION: The #4/0 15kV underground cable is a standard component of the City's electric power network. It will be used in new developments and in electrical distribution system upgrades/replacements. Planned projects requiring this cable include the Reynolds Ranch Development and various underground upgrade/maintenance projects throughout the City. The current inventory level is insufficient to meet known upcoming needs. The last procurement for this cable was made on June 20, 2003. In order to meet present project requirements and anticipated future needs over the next few years, staff recommends purchasing the 25,000 feet of #4/0 15kV underground electric cable. FISCAL IMPACT: Estimated cost is \$45,000. **FUNDING:** Included in FY 2007-08 Budget Account No. 161651. Kirk Evans, Budget Manager George F. Morrow Electric Utility Director PREPARED BY: Demy Bucaneg, Jr., P.E., Manager, Engineering & Operations Weldat Haile, Senior Power Engineer GFM/DB/lst

Blair King, City Manager

APPROVED:

AGENDA TITLE: Approve Specifications and Authorize Advertisement for Bids for Maintenance

of the Lodi Consolidated Landscape Assessment District 2003-1, Fiscal Year

2008/09

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Approve specifications and authorize advertisement for bids for

maintenance of the Lodi Consolidated Landscape Maintenance Assessment District 2003-1 for Fiscal Year 2008/09, July 1, 2008

through June 30, 2009.

**BACKGROUND INFORMATION:** This project provides for the contract landscape maintenance of the

Lodi Consolidated Landscape Maintenance Assessment District 2003-1. This contract will cover Zones 1, 2, 5, and 6. (Other zones do not have landscaping to maintain.) The current

contract is just under \$25,000, but the current contractor has struggled to meet their contractual obligations over the past year. The new contract estimate may be as much as \$70,000 for 12 months. The maintenance work covered under this contract is limited to the landscape and irrigation

improvements along the reverse frontage areas of the subdivisions in these zones. The assessment costs for the maintenance zones were based on weekly maintenance.

Specifications are on file in the Public Works Department.

**FISCAL IMPACT**: The money for this maintenance contract is provided by the various

assessment revenue accounts of Lodi Consolidated Landscape Maintenance Assessment District 2003-1 and does not come out of the General Fund.

FUNDING AVAILABLE: Funding comes from Lodi Consolidated Landscape Maintenance Assessment

District 2003-1 various assessment revenue accounts.

Project Estimate: \$70,000

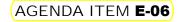
Budgeted: 2008/09 fiscal year Planned Bid Opening Date: April 17, 2008

Richard C. Prima, Jr.
Public Works Director

Prepared by Curt Juran, Assistant Streets and Drainage Manager RCP/GMB/CJ/dsg

cc: F. Wally Sandelin, City Engineer/Deputy Public Works Director George M. Bradley, Streets & Drainage Manager

APPROVED: _	
	Blair King, City Manager





AGENDA TITLE: Adopt Resolution Authorizing a Sole Source Procurement of Remote Terminal Units

(RTU's) and Accessories, from Geo Honn Company, Inc. of Vacaville, CA for Henning

and Industrial Substations (not to exceed \$60,000) (EUD)

MEETING DATE: March 5, 2008

PREPARED BY: Electric Utility Director

**RECOMMENDED ACTION**: Adopt a resolution authorizing a sole source procurement of remote

terminal units (RTUs) and accessories, from Geo Honn Company, Inc. of Vacaville, California for Henning and Industrial Substations not to exceed

\$60,000.

**BACKGROUND INFORMATION**: RTU's are a critical component for the safe and reliable operation of an

unmanned power station like Henning (1 RTU) and Industrial Substation (2

RTU's) facilities. An RTU is used to monitor the operating status power

equipment and also to control power circuit breakers and load tap changers. The existing RTUs at both facilities were manufactured by Landis & Gyr (subsequently acquired by Siemens). It is no longer supported by the manufacturer and components are difficult to find.

Over the past months, the Electric Utility Department (EUD) has experienced intermittent problems with these RTU's prompting calls to substation personnel to place them back into operation. Problems include communication failure, no meter indications, failure of alarm signals, etc. The existing RTU's are antiquated with outdated operating and communication protocols that are difficult to integrate into existing control equipment. They also have connectivity issues when tying to the new fiber optic based communication system that was recently put into operation at the substations.

The most cost effective approach to modernizing the RTU's is to perform what is called a "migration". Migration means the core electronic elements within the RTU's are replaced but the cabinets, relays, and other standard items continue to be utilized. Cost savings through utilization of the migration approach is significant (about 2/3); however, it does require that the core RTU electronics be purchased from the existing RTU manufacturer for compatibility reasons.

The proposed replacement RTU's will be Siemens Model TG5700. They will be compatible with the City's new Supervisory Control and Data Acquisition (SCADA) System. This equipment is proposed to be purchased from Geo Honn Company, Inc. of Vacaville, CA on a sole source basis as explained above. This is the same company that last year successfully bid for the RTU (complete unit) for the Killelea Substation Rehabilitation Project and for similar migration equipment for the McLane Substation (similar pricing).

For purposes of maintaining reliable and safe electric system operation, staff recommends City Council approval for the procurement of the RTUs from sole source provider Geo Honn Company of Vacaville, California.

FISCAL IMPACT:	The projected cost is not to exceed \$60,000.	
	APPROVED:Blair King, City Manager	

Adopt Resolution Authorizing a Sole Source Procurement of Remote Terminal Units (RTU's) and Accessories, from Geo Honn Company, Inc. of Vacaville, CA for Henning and Industrial Substations (not to exceed \$60,000) (EUD) March 5, 2008
Page 2 of 2

FUNDING:	Included in FY 2007-08 Budget Account No. 161651.				
	Kirk Evans, Budget Ma	anager			
		George F. Morrow Electric Utility Director			
PREPARED BY:	Demy Bucaneg, Jr., P.E., Manager, Engineering & Operations Allen Aadland, Acting Electric Systems Supervisor				

GFM/DB/lst

#### RESOLUTION NO. 2008-

# A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE SOLE SOURCE PURCHASE OF REMOTE TERMINAL UNITS AND ACCESSORIES FOR HENNING AND INDUSTRIAL SUBSTATIONS

\_\_\_\_\_\_

WHEREAS, Lodi Municipal Code §3.20.070 authorizes dispensing with bids for purchases of supplies, services, or equipment when it is in the best interest of the City to do so; and

WHEREAS, the remote terminal units (RTUs) are a critical component for the safe and reliable operation of an unmanned substation like Henning and Industrial Substations, and the RTUs are used to monitor the operating status power equipment and also used to control power circuit breakers and load tap changers; and

WHEREAS, the existing RTUs at both Industrial and Henning Substations were manufactured by Landis & Gyr (now Siemens) and are no longer supported by Siemens, and components are difficult to find; and

WHEREAS, in past months, the Electric Utility Department has experienced intermittent problems (such as communication failures, no meter indications, regular failure alarm signals, etc.) with the RTUs prompting calls to substation personnel to put them back into operation; and

WHEREAS, the proposed replacement RTUs are a Siemens Model TG5700, which will be compatible with the existing Supervisory Control and Data Acquisition System; and

WHEREAS, to eliminate unnecessary additional cost, the existing protection relays and other controlling devices that are working are to be kept with the existing RTUs since they are in good condition, while replacing the RTUs (three total); and

WHEREAS, staff recommends that the RTUs be purchased sole source from Geo Honn Company, Inc., of Vacaville, California, which is the same company that successfully bid for the RTU for the Killelea Substation Rehabilitation Project.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the purchase of RTUs and accessories for the Henning and Industrial Substation from Geo Honn Company, Inc., of Vacaville, California, in an amount not to exceed \$60,000.

Dated:	March 5,	2008				
				======		

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL City Clerk

2008-\_\_\_\_



AGENDA TITLE: Adopt Resolution Awarding the Professional Services Contract to Auriga

Corporation of Milpitas, California to Perform Siting Work for the West 60kV Transmission Project and Appropriate Funds (not to exceed \$34,000) (EUD)

MEETING DATE: March 5, 2008

PREPARED BY: Electric Utility Director

**RECOMMENDED ACTION**: Adopt a resolution awarding the professional services contract to Auriga

Corporation of Milpitas, California to perform siting work for the West 60kV

Transmission Project and appropriate funds not to exceed \$34,000.

**BACKGROUND INFORMATION**: On June 20, 2007, the City Council awarded a contract to Auriga

Corporation (Auriga) of Milpitas, California to provide conceptual routing

and siting evaluation, alternative and right-of-way analyzes,

issue identification, cost/benefit studies, and other related recommendations for a potential transmission line interconnection to the vicinity of Northern California Power Agency's (NCPA's) Steam Injected Combustion Turbine (STIG) Plant from western Lodi. Several alternative routes were analyzed by Auriga who submitted the final report in January 30, 2008.

Staff reviewed the final report and evaluated seven (7) transmission alternative routes as presented by Auriga. Both Auriga and the Electric Utility Department (EUD) recommended Alternative 7 as the preferred alternative because it improves reliability, increases capacity and cost/benefits. It also is expected to reduce capital costs and environmental impacts.

As depicted in Exhibit 1, Alternative 7 traverses south of the proposed Westside Substation to Harney Lane. The Line then proceeds west towards Devries Road then southerly on Devries Road and turning westward on Tredway Road. From there, the line traverses diagonally southwest until it crosses the I-5 Freeway and terminates at a proposed interconnection substation in the vicinity of NCPA's STIG Plant. The transmission project is proposed to be in a double circuit configuration using wood poles with steel poles where needed. Background on this project was presented to the City Council on February 5, 2008 during a Shirtsleeve Session Meeting.

The next steps will include communicating, negotiating and interfacing with property owners, other utilities, state and county agencies, permitting authorities and other interest groups. Considering these tasks and activities, staff recommends obtaining outside professional assistance to facilitate communications with impacted parties concerning the selected and preferred alternative transmission route which is Alternative 7.

Auriga Corporation submitted a detailed proposal documenting the scope of services related to activities that are appropriate for the next stage. In order to build upon the knowledge and connections that were established by Auriga Corporation during the transmission siting and evaluation phase, staff recommends the continued employment of this firm to perform the "next-step" transmission work.

The construction of new transmission lines encompasses activities requiring lengthy execution, adjustment, and repetitive negotiation and coordination in routing/siting activities including the need to secure rights-of-way and easements. Therefore, staff is recommending City Council approval awarding this professional services contract to

APPROVED: _		
	Blair King, City Manager	

Adopt Resolution Awarding the Professional Services Contract to Auriga Corporation of Milpitas, CA to Perform Siting Work for the West 60kV Transmission Project and Appropriate Funds (not to exceed \$34,000) (EUD) March 5, 2008
Page 2 of 3

Auriga Corporation of Milpitas, California for an amount not to exceed \$34,000. They are expected to complete the scope of services within 90 days from the date of 'Notice to Proceed'.

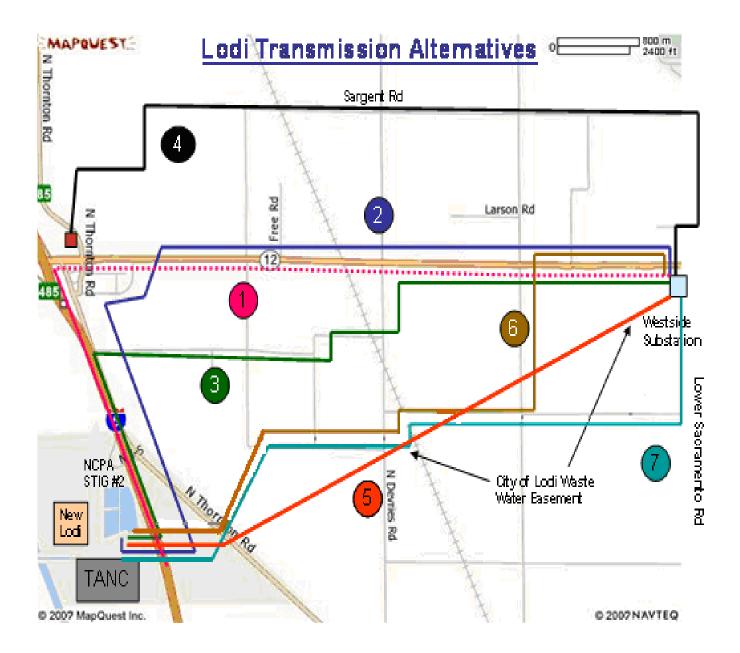
FISCAL IMPACT:	The proposed project cost is not to exceed \$34,000.		
FUNDING:	Bond proceeds are allocated in Account No. 161.1082.		
	Kirk Evans, Budget Manager		
	George F. Morrow Electric Utility Director		

**PREPARED BY:** Demy Bucaneg, Jr., P.E., Manager, Engineering & Operations Weldat Haile, Senior Power Engineer

GFM/DB/lst

Attachments

**Exhibit 1: Lodi Transmission Alternatives** 



### **Proposal To**

## City of Lodi Electric Utility Department

### **Professional Consulting Services**

### For

Westside 60 KV Transmission Project

# Present Project Plans to Property Owners and Agencies

Submitted by



890 Hillview Court, Suite 130 Milpitas, California 95035

**February 28, 2008** 

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#### 1. INTRODUCTION

Auriga Corporation is pleased to submit this proposal to the City of Lodi Electric Utility Department to provide professional consulting services for the 60 kV Transmission Line from Westside Substation to the White Slough Plant.

#### 2. OVERVIEW

The City of Lodi Electric Utility (The City) recently completed a study to evaluate transmission routing options, potential impacts, and the mitigation needed to permit and construct a 60kV transmission line from White Slough to Westside Substation.

The City presented the results of that study to the City of Lodi City Council at a Shirtsleeve Session on February 5, 2008, which included sharing various route alternatives and the recommended next steps.

This proposal is to provide consulting services to support The City to lead the discussions with the community, impacted property owners, and external agencies for the purpose of acquiring land rights, permits, and agreements required to construct the transmission line.

#### 3. OBJECTIVES

The primary objective of this project is to determine the preferred alternative for the 60 kV transmission line for which for The City can acquire environmental approval, permits, and land rights from the four to five impacted property owners.

Auriga Consultant will meet with all of the impacted property owners, explain the project goals, describe the land rights needed, and negotiate the acquisition of the right of way.

Auriga Consultant will also meet with external agencies, such as the San Joaquin County Airport Commission, Pacific Gas & Electric Company (PG&E), CalTrans, and the San Joaquin County Permit Center, to describe the project and acquire written agreements from each agency on their requirements related specifically to the preferred alternative, and what their role in the project will be.

To the extent possible, we will provide these consulting services so as to minimize the impact on the City's day to day operation of the electric utility.

#### 4. APPROACH

Auriga Corporation will enter into a Professional Consulting Services Agreement with the City of Lodi to perform the scope of services described in this proposal. Fees will be charged for the actual hours of consulting services worked and the actual cost for meals and lodging, if required.

#### 5. WORK PLAN AND BUDGET

We propose to perform the following services.

Item	Description	Estimated Hours	Notes
1	Prepare presentations and supporting documents	30 hours	Customized presentations
	that will be used to communicate the project description		that will fit the specific agency
2	Meet with the 4-5 property owners on	32 hours	Includes scheduling,
	Alternative 7 that land rights are needed. Share		presenting, and discussion of
	the placement of facilities and the range of value for the right of way.		terms for the acquisition of a
3	Present the City's project plans to PG&E.	48 hours	Acquire a written agreement
	Negotiate the role each will play and their scope		or MOU of the role and
	of work on the transmission project		scope of work
4	Present the City's project plans to the Airport	24 hours	Acquire a written agreement
	Commission. Reach agreement on a cost effective		of the permit terms and
	placement of the project's overhead facilities that		requirements.
5	Present the City's project plans to the San	48 hours	Acquire a written agreement
	Joaquin County Permit Center.		of the permit terms and
6	Present the City's project plans to CalTrans for	24 hours	Submit Encroachment Permit
	the Interstate 5 line crossing.		along with plans.
7	Miscellaneous Expenses	\$2,000	Meals & Lodging
			Billed for actual hours,
	TOTAL BUDGET = Not to Exceed	\$34,000	plus expenses.

#### 6. SCHEDULE

We will complete the scope of services described above within 90 days from the time of receiving the "Notice to Proceed".

If additional time is needed, a request for a time extension will be submitted with an explanation.

#### 7. PROPOSED STAFF

We propose to assign Mr. Robert Streich to provide professional consulting services to the City for the 60 kV Transmission Project.

#### 8. FEE AND PAYMENT TERMS

The Total Fees for consulting services and expenses is "Not to Exceed" \$34,000.

We will submit an invoice for 5<sup>th</sup> of each month for the actual hours spent for the service performed and actual expenses from the prior month. We anticipate that the City will make a payment of the approved invoices within 30 days of submission of the invoice.

#### FEE SCHEDULE - 2008

#### HOURLY BILLING RATE

• Principle Consultant-----\$175/hour

#### **EXPENSES**

- ♦ Auto Mileage ------\$0.45/mile
- ♦ Meals & Lodging------\$150/day
- ♦ Miscellaneous Expenses ------At Cost

#### **NOTES**

Invoices will be submitted to the City on a monthly for the services and expenses incurred during the previous month. Payment is due within 30 days of receipt of the invoice.

# A RESOLUTION OF THE LODI CITY COUNCIL AWARDING PROFESSIONAL SERVICES CONTRACT FOR PERFORMANCE OF SITING WORK FOR THE WEST 60kV TRANSMISSION PROJECT AND AUTHORIZING THE CITY MANAGER TO APPROPRIATE FUNDS

\_\_\_\_\_\_

WHEREAS, the Lodi Electric Utility Department (EUD) believes it is beneficial to construct a second electrical "feed" into the City of Lodi from the west; and

WHEREAS, a study was recently completed for EUD, which highlighted a number of possible routes for this electrical feed including a preferred route extending to the west and southwest from a planned Westside Substation; and

WHEREAS, EUD desires to obtain outside expertise to assist it in meeting with involved agencies, organizations, and property owners along the preferred route in order to obtain needed permissions to build the West 60kV Transmission Project; and

WHEREAS, Auriga Corporation, of Milpitas, California, provided siting expertise during the recently completed study for the project and has offered to continue to assist EUD in accordance with its February 8, 2008, proposal.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby award Professional Services Contract to Auriga Corporation, of Milpitas, California, to assist EUD in undertaking the next steps for siting of the West 60kV Transmission Project in an amount not to exceed \$34,000; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to appropriate funds up to \$34,000 for the siting work for the 60kV Transmission Project for EUD.

Dated:	March 5, 2008			

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL City Clerk

2008-

AGENDA TITLE: Adopt Resolution Approving One-Year Extension of Tree Trimming 2007

Contract with West Coast Arborists, Inc., of Stockton (\$53,000)

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION:** Adopt a resolution approving a one-year extension of the Tree

Trimming 2007 contract with West Coast Arborists, Inc., of Stockton,

in an amount not to exceed \$53,000.

**BACKGROUND INFORMATION:** This project provides for the structural pruning and maintenance

trimming of trees in a grid program and would complete up to an additional 898 trees based on the existing grid pruning contract that was

first awarded to West Coast Arborists, Inc., on February 21, 2007. The

contractor has offered to extend the existing contract for an additional year with no cost increase.

The per-tree cost of \$59 has accomplished pruning of a total of 1,185 trees at a cost just under \$70,000 with exceptional results. Additional funding from the general fund in the amount of \$18,500 was provided in the current fiscal year which helped to keep the tree trimming on an eight-year cycle, as opposed to a 12-year cycle without the additional funds.

The current contract contains options to renew, if mutually agreeable. West Coast Arborists has offered to extend the contract for an additional year honoring the prices for both the grid pruning and the optional bid items (emergency tree removal, stump grinding, etc.).

Staff is requesting the approval now in order to secure this excellent price for next year while contractors are committing to this coming summer's work.

FISCAL IMPACT: This contract extension will total no more than \$53,000 and will be funded

from the Streets and Drainage operating budget with additional funding from the general fund, <u>subject to budget approval and appropriation</u>. If necessary, the contract amount can be reduced to match available funds to a minimum

of \$10,000.

FUNDING AVAILABLE: This project will be included in the FY 08/09 budget from the Streets and

Drainage operating budget (3215036).

Kirk Evans, Budget Manager

Richard C. Prima, Jr.
Public Works Director

Prepared by Curt Juran, Assistant Streets and Drainage Manager RCP/GMB/CJ/dsg

cc: Kirk Evans, Budget Manager

George M. Bradley, Streets and Drainage Manager

Ray Fye, Tree Operations Supervisor

APPROVED:		
	Blair King, City Manager	

#### RESOLUTION NO. 2008-

# A RESOLUTION OF THE LODI CITY COUNCIL APPROVING A ONE-YEAR EXTENSION OF THE TREE TRIMMING 2007 CONTRACT WITH WEST COAST ARBORISTS, INC.

\_\_\_\_\_\_

WHEREAS, a contract was awarded to West Coast Arborists, Inc, of Stockton, by the Lodi City Council on February 21, 2007, and that contract contains options to renew; and

WHEREAS, West Coast Arborists, Inc., has agreed to extend the contract for an additional year honoring the prices for both grid pruning and optional bid items; and

WHEREAS, the per-tree cost of \$59 is a substantial reduction from previous bids that had offered an average cost of \$159 per tree; and

WHEREAS, since the awarding of this contract, a total of 1,185 trees have been trimmed with exceptional results; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve a one-year extension of the Tree Trimming 2007 contract with West Coast Arborists, Inc., of Stockton, California, in an amount not to exceed \$53,000, subject to actual funding in the fiscal year 2008/09 budget with a minimum award amount of \$10,000; and

BE IT FURTHER RESOLVED that the term of this extension shall be for the period July 1, 2008 through June 30, 2009.

Dated: March 5, 2008	
Lhereby certify that Resolution No. 2008-	was nassed and adonted by the

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk

2008-

AGENDA TITLE: Adopt Resolution Approving Professional Services Agreement with

Rolfes Engineering, Inc., of Stockton, for Engineering Design Services and

Construction Administration for Library Heating, Ventilation, and Air

Conditioning (HVAC) (\$42,640)

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Adopt a resolution approving the attached professional services

agreement with Rolfes Engineering, Inc., of Stockton, for engineering design services and construction administration for the Library heating, ventilation, and air conditioning (HVAC) in the amount of \$42,640 and authorizing the City Manager and City Clerk to execute the agreement.

**BACKGROUND INFORMATION**: The City Library HVAC system is in very poor condition, and funds are

budgeted in the current fiscal year for the system's update/replacement. The project includes replacement of the boiler, chiller, cooling tower, water pumps, supply fan, temperature control system, and some ceiling

diffusers; modification of some ductwork; and installation of a water source economizer, new controls, and variable frequency drives on pumps and fans. Included in the capital project are funds needed for the engineering design, bid specification preparation, and construction administration.

Over the last several years, multiple engineering and HVAC firms have suggested various plans to repair and/or replace portions of the Library's HVAC system. Last year, Rolfes Engineering provided excellent service in producing four scope and cost options that the City could pursue, including phasing the work. Staff recommended, and Council approved, an extensive upgrading and replacement approach, after looking at the short-term and life-cycle costs. Based on the proven working relationship, understanding of the City's needs, and familiarity of project scope, City staff now recommends that Rolfes Engineering be approved to provide the design documents.

Included in the scope of work will be providing energy, electrical, and structural calculations; providing specifications and drawings; organizing design meetings; coordinating communication and design between the City and all contracted engineering services; and providing construction support services, including design coordination meetings, job-site meetings, pre-bid and pre-construction job walks, submittal review, and coordination between the City, the design team, and the contractors during construction. Construction administration will be provided by Public Works staff.

FISCAL IMPACT:	An upgraded HVAC	system at the Library	y wiii provide more	reliable and
----------------	------------------	-----------------------	---------------------	--------------

efficient heating and cooling for Library patrons and will save operational,

maintenance, and repair costs.

. . . . . . . . .

**FUNDING AVAILABLE**: Funds for this project will come from the Library HVAC Capital Fund (211813).

Kirk Evans, Budget Manager

Richard C. Prima, Jr.
Public Works Director

Prepared by Dennis J. Callahan, Fleet and Facilities Manager Attachment

----

cc: Nancy Martinez, Library Services Director John Munoz, Facilities Supervisor Rolfes Engineering, Inc.

APPROVED: Blair King, City Manager

#### PROJECT ENGINEER AGREEMENT

#### PROJECT:

Library HVAC Renovation

#### PARTIES:

City of Lodi

221 West Pine Street

P.O. Box 3006

Lodi, CA 95241-1910

**ENGINEER:** Rolfes Engineering, Inc.

1036 W. Robinhood Drive, Suite 201

Stockton, CA 95207-5627

#### **DESIGNATED PERSONNEL:**

(a) Principal in Charge: John F. (Fred) Rolfes(b) Project Engineer: John F. (Fred) Rolfes

(c) Structural Engineer: Gudgel Construction Engineers, Tim Gudgel

(d) Mechanical Engineer: John F. (Fred) Rolfes

(e) Electrical Engineer: HCS Engineering, Richard Smith

(f) HVAC Controls: L & H Airco, Bill Carmody

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ARTICLE TWO: Schedule of Services

ARTICLE THREE: Compensation and Payment

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ARTICLE FIVE: Basic Services of Engineer ARTICLE SIX: Basic Services of City

ARTICLE SEVEN: Time

ARTICLE EIGHT: Additional Services

ARTICLE NINE: Termination of Agreement

ARTICLE TEN: Indemnity
ARTICLE ELEVEN: Personnel

ARTICLE TWELVE: Standards of Performance
ARTICLE THIRTEEN: Miscellaneous Provisions
ARTICLE FOURTEEN: Extent of Agreement/Waiver

#### THE PARTIES AGREE THAT:

#### **ARTICLE ONE: Project Description**

The Engineer shall provide services as described herein. The general design of the project shall be as defined in the Option 1 analysis and recommendation proved by Rolfes Engineering, Inc., dated March 24, 2006, and by this document.

The project will consist of the following elements:

- 1) Working drawings showing requirement for upgrading the existing HVAC system, including but not limited to, the following:
  - a. Replacement of boiler
  - b. Replacement of chiller
  - c. Replacement of cooling tower with new dirt separator
  - d. Modification of ductwork in selected areas
  - e. Replacement of ceiling diffusers where required
  - f. Replacement of VAV boxes with new controls
  - g. Replacement of hot water, chiller water pumps and condenser water pumps
  - h. Replacement of supply fan Number 1
  - i. Installation of a water source economizer
  - j. Replacement of the temperature control system with an Energy Management System (EMS)
  - k. Installation of variable frequency drives on various pumps and fans
- 2) Engineering for the following:
  - a. Mechanical:
    - i. Required energy calculations
    - ii. Specifications
    - iii. Coordination between City and all Engineering Divisions
  - b. Electrical:
    - i. Required electrical calculations
    - ii. Specifications
    - iii. Required one-line and other electrical drawings
  - c. Structural:
    - i. Required equipment hold-down calculations and drawings
    - ii. Specifications
- 3) Contract Administration:
  - a. Design coordination meetings
  - b. Job-site meetings
  - c. Pre-bid job walk
  - d. Pre-construction job walk
  - e. Submittal review
  - f. Coordination between Owner, design team and contractors during construction

#### Services will not include:

- 1) Fire sprinkler design drawings and calculations
- 2) Landscape irrigation system
- 3) Detailed system cost estimates
- 4) Analysis or design of alternate air-conditioning systems
- 5) Site drainage system

The project will be designed to conform to the State of California standards and requirements.

#### ARTICLE TWO: Schedule of Services

- A. Engineer shall complete the required services consistent with the following schedule:
  - Schematic (Conceptual) Design Phase N/A
  - Design Development and Construction Documents Phase 4 weeks
  - Permit and Bid Phase 4 weeks
  - Construction Phase 20 weeks

Schedule is contingent on City meeting review schedule requirements.

#### ARTICLE THREE: Compensation, Method of Payment

- A. Compensation for Basic Services
  - (1) Total compensation, including all expenses, shall not exceed \$42,640. This compensation includes all phases and services, excluding additional services and reimbursable expenses.
  - (2) Additional Services
    - (a) Additional services shall be defined as services not included as basic services within this contract that the City directs the Engineer in writing to perform. In the event of this direction, Engineer shall be compensated pursuant to this section. Additional services will only be paid if documented in advance in writing.
    - (b) Maximum rate per hour, including overhead, administrative costs, and profit shall be as shown in Exhibit A (Standard Hourly Fee Schedule).
    - (c) With prior approval, the City shall pay for reimbursable expenses, as outlined below, in performing additional services. The payment shall be limited to actual out-of-pocket expenses as reflected on an invoice or other proof of payment.
    - (d) Payment for additional services, including Reimbursable Expenses, shall be made monthly upon presentation of a statement of services in duplicate.
    - (e) Payment for additional services shall only be made if the additional services are set forth in a written change order signed by the City of Lodi.
  - (3) Reimbursable Expense
    - (a) Reimbursable expenses require prior approval by the City of Lodi.
    - (b) Reimbursable expenses are defined as follows, and will be billed at cost plus ten (10%) percent:
      - 1. Prints or sepias, requested in writing by the City of Lodi.
      - 2. Special phone calls, for information requested in writing by the City of Lodi.
      - Special trips, as requested in writing by the City of Lodi.
- B. Phase Payment: Upon submittal of statements in duplicate, City shall pay as follows:
  - (1) The \$42,640 fee shall be broken down as follows:

Engineering	\$ 38,765	91%
Contract Administration	\$ 3,875	9%
Total	\$ 42,640	100%

Payment for this work shall be paid monthly upon submittal of a statement to the City from the Engineer.

#### **ARTICLE FOUR: Definitions**

- A. Not used.
- B. Major Categories of Work are those applicable categories of construction work necessary for completion of construction of the entire project and may include, but not

- be limited to, the following construction categories: demolition, general construction, finishes, heating, ventilation, air conditioning modifications and improvements, plumbing modifications and improvements, and electrical modifications and improvements.
- C. Appropriate Authorities and Lending Agencies shall mean any private, local, municipal county, state, regional authority or agency with which the project may be involved. This term is intended to include those agencies and authorities which may require information or the filing of drawings, project manual, etc., in connection with the project on either a voluntary or nonvoluntary basis.
- D. The Contract Administrator shall be the City Administrator or his authorized representative. He shall represent City in all matters except when approval is specifically required by the City Council.

#### **ARTICLE FIVE: Basic Services of Engineer**

- A. Services in General: Engineer shall
  - (1) Consult, as necessary, with authorized employees, agencies, and/or representatives of City relative to the design and major categories of work.
  - (2) Cooperate with other professionals employed by City in the design of other work related to the project.
  - (3) Contract for, or employ at his expense, consultants to the extent he deems necessary for design of the project, including Mechanical, Electrical, and Structural Engineers licensed as such by the State of California, and other consultants necessary for development of the project, as provided under "Designated Personnel and Consultants", Paragraph 2. Nothing in the foregoing procedure shall create any contractual relation between City and any consultants employed by Engineer under the terms of this Agreement.
  - (4) Designate Fred Rolfes as the Principal in Charge who shall, so long as his performance continues to be acceptable to the City, remain in charge of the services for the project from beginning through completion of services provided for in this Agreement. Designate Fred Rolfes as Project Manager.
  - (5) Assist City in fulfilling normal requirements set forth by appropriate authorities whose interest bears on the design, cost, and construction of the project.
  - (6) Not used
- B. Schematic Design Phase: N/A.
  - (1) Not used.
  - (2) Not used.
  - (3) Not used.
  - (4) Not used.
- C. Development Phase: Under this Phase, the Engineer shall complete the design development work relative to the Schematic Design.
  - (1) The Engineer shall develop the approved schematic design approach. Based on the approved approach, the Engineer shall prepare Design Development documents.
  - (2) The Engineer shall review existing documentation, including building plans, utility easements, and landscape irrigation and plantings.

- (3) The Engineer shall analyze existing utility connections, determine site features to remain, and analyze impact of existing conditions.
- (4) The Engineer shall develop site plans, floor plans, furniture layouts, elevations, and building sections as needed to fix and describe the project as to structural, mechanical, and electrical systems.
- (5) The Engineer shall provide a reproducible document consisting of:
  - (a) Site plans indicating general location and nature of site improvements.
  - (b) Structural, mechanical, plumbing, and electrical floor plans, and major equipment locations.
  - (c) Not used.
  - Outline specifications describing the major systems, equipment, materials, and items to be used (installation procedures not required); and the specific structural materials, the mechanical and electrical systems, and all major special systems and equipment to be used. The specifications shall be organized into 16 divisions following the recommendations of the Uniform System for Construction Specifications.
  - (e) Not used.
- (6) The Engineer shall provide City and updated Design Development documents for review.
- D. Construction Documents Phase: This phase commences only after the City has approved the Engineer's Design Development. Upon receipt of notice from the City to proceed with the Construction Documents Phase, the Engineer shall commence the following services:
  - (1) Based upon the Design Development and any further adjustments in the scope or quality, the Engineer shall prepare, for approval by the City, Construction Documents, consisting of drawings and a project manual, setting forth in detail the requirements for the construction of the project. Such documents shall be full, compete and accurate, giving such information as will enable a competent builder to carry them out.
  - (2) The construction documents shall conform to and be consistent with the previously approved Design Documents. The Engineer shall incorporate no modification thereto without prior consent of the City.
  - (3) Not used.
  - (4) Not used.
  - (5) Not used.
  - (6) If the City orders modifications to the approved design, the Engineer shall prepare additional Design Development Documents, Construction Documents, and Construction cost Estimates, and shall receive compensation as an Additional Service.
  - (7) The Engineer shall, to the best of his ability, endeavor to prepare all drawings and specifications in conformity with all applicable state and federal laws and regulations.
  - (8) The Engineer shall review and edit, as necessary, the form General Conditions and Division 1 of the Specifications provided by the City. The City may accept or reject the Engineer's suggested changes, at its sole discretion.

- (9) The Engineer shall submit all required construction documents to the City as a package, with all items completed. Documents shall consist of one reproducible Mylar and original 8 ½- x 11-inch specification book ready for reproducing.
- (10) The Engineer shall make changes necessary to comply with the City's review comments and resubmit corrected documents.
- (11) The Engineer shall assist the City and the Construction Manager in developing a construction schedule for the project.
- (12) All drawings shall be provided in AutoCAD, latest version.

#### E. Bidding Phase:

- The Engineer, following the City's approval of the Construction Documents, shall assist the City in obtaining bids from general contractors or negotiating with a selected contractor for a lump-sum fixed-price contract for construction. The Engineer shall receive bidder's questions, develop clarification as required, prepare addenda for the City's use, and attend a prebid conference. The City will administer the overall bidding process.
  - Following the City's approval of the construction documents, the Engineer shall furnish to the City the original tracings of final working drawings for signature and the original project manual. Project manual shall be on 8 ½ x 11-inch paper, unless otherwise approved by the City. For bidding purposes, the Engineer shall provide reproducible drawings and the City shall reproduce the drawings and project manual. All drawings shall be provided on CAD format.
  - (b) The Engineer shall assist the City in interpreting the drawings and specifications during the bidding process, and prepare addenda to the drawings or specifications that may be required, but the City shall approve all proposed addenda before delivery to interested bidders. The Engineer shall issue no addenda verbally or in writing to bidders.
  - (c) The Engineer shall participate in prebid conferences with interested bidders and the City staff, at the City's request.
  - (d) The Engineer shall advise the City concerning acceptance or rejection of bids for the project.
  - (e) The City reserves the right to accept bids or to reject any or all bids received.

#### F. Documents and Drawings:

- (1) Documents and drawings shall consist of all documents, original and reproducible tracings, plans and specifications, calculations, sketches, and renderings prepared by the Engineer which shall be the property of the City. The Engineer shall furnish the City with documents as the City requests, whether or not complete, upon completion of the project, or upon suspension or termination of this Agreement as provided hereinafter. The Engineer shall have the right to retain copies of documents and drawings for its records.
- (2) The Engineer shall furnish to the City for purposes of checking and approving copies of:
  - (a) Design Development/Contract Documents that are prepared by the Engineer at 50%, 95%, and 100% completion.

- (3) The Engineer shall furnish to the City for reproduction, original tracings or equivalent quality reproducible drawings and specifications masters for bidding and construction.
- (4) The Engineer shall provide all drawings/changes on AutoCAD, latest version.
- G. Not used.

#### **ARTICLE SIX: Basic Services of City**

The City shall provide the following services and material to the Engineer:

- A. Building Information: The City shall provide the Engineer with available plans and any technical information concerning all buildings or spaces that are affected by the project, including necessary site survey and topographical and soil information as well as necessary telephone, communication and data requirements for the project.
- B. *Permits*: The City shall pay for all required fees and permits. The Engineer will advise potential permit requirements.
- C. The City shall assist the Engineer in field investigations as requested and shall assist in getting information in the form of drawings, reports, photographs and video tapes in a timely manner to meet the project schedule.

#### **ARTICLE SEVEN: Time**

- A. The Engineer shall provide its professional services in accordance with the ordinary standard of care, skill, and diligences customarily followed by Engineers and engineers in this and similar communities.
- B. The Engineer shall comply with all response times or schedules specified in the project manual or agreed to by the City.
- C. Notwithstanding Paragraph B, the Engineer shall respond with the ordinary standard of care, skill, and diligence customarily followed by Engineers and engineers in this and similar communities.
- D. The City will pay for and assist in required review by agencies having jurisdiction over this project.
- E. Time is of the essence in performance of the work outlined herein. Neither party shall be responsible for delays from causes beyond their reasonable control.

#### **ARTICLE EIGHT: Additional Services**

- A. If the Engineer is requested to provide additional services at any stage of the project development, the City shall issue a written work order.
- B. In addition to services specified elsewhere in this Agreement, the Engineer shall receive additional compensation for the following additional services:
  - (1) Revision of previously approved drawings and/or specifications, or failure of the City to meet schedule of services (Article Two), which incur cost to the Engineer as the result of action by the City when not otherwise the Engineer's responsibility pursuant to this Agreement.
  - (2) Making planning surveys, feasibility studies, and special analysis of the City's needs to clarify requirements for project programming.
  - (3) Supervision of repair of damage to the structure when so directed by the City.
  - (4) Additional services caused by the delinquency or insolvency of the contractor.

- (5) Preparation of measured drawings of existing structures, mechanical, plumbing, electrical systems and facilities as authorized by the City.
- (6) Travel and per diem outside of San Joaquin County when the City directs the travel in writing prior to commencing travel.

#### **ARTICLE NINE: Termination of Agreement**

- A. Either party may terminate this Agreement upon thirty (30) days written notice should the other party fail substantially to perform its terms through no fault of the party initiating the termination.
- B. The City, at its sole discretion, may terminate this Agreement upon at least seven (7) days written notice to the Engineer.
- C. Upon termination of this Agreement or suspension of work by either party, the Engineer shall furnish to the City before further payment by the City all documents and drawings prepared under this Agreement, whether complete or incomplete. Such documents and designs shall become the City's exclusive property, free of claim or encumbrance by the Engineer.
- D. In the event of termination not the fault of the Engineer, the Engineer shall be compensated for all services performed to termination date, together with compensation for Additional Services completed, less amounts paid to date. No additional payment will be made to the Engineer other than for actual services completed as described above. Total amount of such compensation shall not exceed total amount payable at completion of phase during which the termination occurred.

The rates for such compensation shall be as specified in Article Three. Acceptance by the Engineer of such payment shall constitute a complete accord and satisfaction between the parties.

#### **ARTICLE TEN: Indemnity**

- A. Indemnity: The Engineer shall defend, indemnify, and save harmless the City, its officers, consultants, and employees from and against any and all claims, demands, losses, defense, costs, or liability which the City, its officers, consultants, and/or employees may sustain or incur, or which may be imposed upon them for injury to or death of persons, or damage to property to the extent caused as a result of or arising out of the negligent acts, errors or omissions of the Engineer during the performance of services under the terms of this Agreement.
- B. *Professional Liability Insurance*: During the entire term of this Agreement, the Engineer shall obtain and maintain in full force and effect professional errors and omissions (malpractice) liability insurance, which shall include the following provisions:
  - (1) Policy Limits: Policy limits of said insurance shall be no less than \$1,000,000 limit per claim and in the aggregate.
  - (2) Extended Claim Coverage: The Engineer shall maintain professional liability insurance of the type generally available, insuring the Engineer for a period of one year following completion of the services provided under this Agreement, providing such insurance is available.
- C. Public Liability and Property Damage Insurance:
  - During the term of this Agreement, the Engineer will at all times maintain, at his expense, comprehensive general liability insurance naming the City, its City Council, officers, agents, employees, and volunteers as additional insured.

Amount of such policy shall be no less that \$1 million combined single limit per occurrence and for bodily injury including personal injury and property damage.

- (2) Liability insurance shall contain the following endorsements:
  - (a) The City shall be added as an additional insured as respects operations of the named insured performed under the contract with the City.
  - (b) It shall be agreed that any insurance maintained by the City shall apply in excess of, and not contribute with, insurance provided by the contractor's liability insurance policy.
  - (c) The Engineer's liability insurance policy shall not be canceled or nonrenewed until after 30 days written notice has first been given the City.
  - (d) Coverage shall include claims arising out of the Engineer's use of automobiles.
  - (e) Liability shall not exclude liability assumed by written contract or agreement.
  - (f) Liability insurance shall include broad form property damage insurance.
  - (g) Prior to commencing services pursuant to this Agreement, the Engineer shall provide certificates indicating the existence of the insurance required by this Agreement, on insurance certificates executed by a duly-authorized agent of the Engineer's insurance provider.
- D. Workers' Compensation: The Engineer shall provide workers' compensation coverage as required by State law, and in signing this Agreement, makes the following certification: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of this Agreement."

#### **ARTICLE ELEVEN: Personnel**

- A. The Engineer shall assign only competent personnel to perform services pursuant to this Agreement.
- B. Supervision of Employees: All work or services performed by the Engineer or subcontractors of the Engineer shall be by or under the direct supervision of registered Engineers and/or engineers.
- C. Designated Personnel and Consultants: A material covenant of this Agreement is that the Engineer shall assign the individuals designated above to perform the functions designated. The Engineer shall not assign other individuals or firms to perform the services of the designated individuals and firms without the prior consent of the City.
- D. Attendance at Meetings: Fred Rolfes shall attend all design meetings called by the City in regards to the project, unless his presence is waived by the City.
- E. If the City, in its sole discretion at any time during the term of this Agreement, desires the removal of any person assigned by the Engineer to perform services, the Engineer shall remove such person immediately upon receiving notice from the City.

#### **ARTICLE TWELVE: Standards of Performance**

A. *Professional Qualifications*: The Engineer represents that it is professionally qualified to perform the work. The City, not being skilled in such matters, relies upon the qualifications of the Engineer to do and perform the work in a professional manner, and

- the City's acceptance of the Engineer's work does not operate as a release of the Engineer from responsibility to so perform the work.
- B. License: The Engineer shall secure and maintain throughout the term of this Agreement all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for the Engineer to practice the profession or to perform the expert professional services required by this Agreement.
- C. Compliance with Laws: The Engineer will endeavor to see to it that the project, as designed, will comply with all applicable federal, state, and local laws, ordinances, regulations and permits in the performance of the Agreement and in the resulting designs, including requirements of Title 24 of the California Code of Regulations.
- D. Standards of Performance: The Engineer shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which the Engineer is engaged. All work products of whatsoever nature which the Engineer delivers to the City pursuant to this Agreement shall be prepared in a manner conforming to the standards of quality normally observed by a personal practicing in the Engineer's profession.

#### ARTICLE THIRTEEN: Miscellaneous Provisions

- A. Meaning of Terms: Terms in this Agreement are intended and shall be construed as having the same meaning as those terms have in the General Conditions of the Contract for construction to be prepared by the City and submitted to interested bidders during the Bidding Phase of the project.
- B. Reuse of Plans:
  - (1) If the City reuses the plans in total or in part on this or any other site, or if the City completes any uncompleted portion of the project, the Engineer and all of its consultants shall be relieved of all responsibility for the construction resulting from such reuse unless the City enters into an agreement with the Engineer for services in connection therewith.
  - (2) The Engineer shall not be entitled to any fees for such use of plans unless City enters into an agreement with the Engineer for services in connection therewith.
- C. Non-Discrimination in Employment: The Engineer shall comply with Section 1735 of the Labor Code, which provides as follows: "No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of (Chapter 1 of Part 7, Division 2 of the Labor Code.)" This requirement also includes the provisions and requirements contained in The Americans with Disabilities Act.
- D. Conflict of Interest:
  - The Engineer shall, at all times in performance of this Agreement, comply with the law of the State of California regarding conflicts of interest, including, but not limited to Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulation promulgated by the California Fair Political Practices Commission.

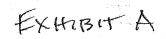
- (2) If any facts come to the Engineer's attention which raise any questions as to the applicability of this law, it will immediately inform the Contract Administrator and provide all information needed for resolution of the question.
- (3) Without limitation of the covenants in Subparagraphs 1 and 2, the Engineer is admonished hereby as follows: These statutes, regulations and laws include, but are not limited to, a prohibition against any public officer, including contractor for this purpose, from making any decision on behalf of the City in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any City decision which has the potential to confer any pecuniary benefit on contractor or any business firm in which contractor has an interest of any type, with certain narrow exceptions.
- E. Authority by City: This Agreement shall not be considered as giving exclusive authority to the Engineer for performing all services pertaining to the design and/or construction of the project. The City may perform, or have performed, any phase, or any portion of any phase, of the various professional services outlined in this Agreement without liability or obligation to the Engineer. If the City elects to do so, it shall give its prior written notice to the Engineer of the election, and the City agrees to defend, indemnify and hold harmless the Engineer and consultants from any and all actual damages which may arise out of such action by the City. This provision shall remain in effect and survive the termination of this Agreement.
- F. Assignment or Subletting: No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Engineer without the express written consent of the City, and any attempt by the Engineer to do so without the City's prior written consent shall be null and void and constitute a material breach of this Agreement. However, this clause shall not prohibit the Engineer from independently contracting with subcontractors or subconsultants on contract to the Engineer, to enable the Engineer to perform the professional services for the City required by this Agreement. In such event, the Engineer shall remain responsible and liable for the work product of any subcontractor or subconsultant.
- G. Independent Contractor. It is understood and agreed that the Engineer is an independent contractor and is not subject to the direction nor control of the City except as to final result. The Engineer shall be solely responsible to pay all required taxes and other obligations, including, but not limited to withholding and social security. The Engineer agrees to indemnify and hold the City harmless from any liability referenced in this paragraph which the City may incur to the federal or state governments as a consequence of this Agreement.
- H. Successors: This Agreement shall inure to the benefit and bind the successors of each of the parties.
- I. Records: The Engineer shall maintain complete and accurate accounting records showing the services performed in connection with performance of this Agreement, the phase during which such services were performed, and the identity of the person(s) performing such services. The Engineer shall make such records available for inspection by authorized representatives of the City at any reasonable time during the performance of this Agreement and for the period specified by the City, no less than five (5) years from and after the date of final payment.
- J. Notice: Any notice, demand, request, consent approval or communication that either party desires or is required to give the other party shall be in writing and either serviced personally or sent by prepaid first-class mail, or the equivalent thereof by private carrier. Any such writing shall be addressed to the address appearing on the first page.

- K. The City acknowledges that the Engineer has no special knowledge or expertise with regard to asbestos or other pollutants and that the Engineer cannot obtain insurance coverage for claims involving hazardous, toxic, and/or asbestos-containing materials or other pollutants. Therefore, the Engineer, its agents, subconsultants and employees shall have no responsibility for, and the City agrees to bring no claim against the Engineer, its agents, subconsultants and employees, relating to the investigation, detection, abatement, replacement, or removal of asbestos material, or relating to sudden or gradual escape or release of hazardous contaminants of any kind into or upon the land, the atmosphere, or any water course or body of water, excepting only such claims which arise out of the sole negligence or willful misconduct of the Engineer, its agents, employees, or subconsultants.
- L. Governing Law: This Agreement shall be construed in accordance with and governed by the laws of California and any legal action arising therefrom shall be initiated in the courts of San Joaquin County, Stockton, California.

#### ARTICLE FOURTEEN: Extent of Agreement/Waiver

- A. This Agreement represents the entire and integrated agreement between the City and the Engineer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Engineer.
- B. The waiver by the City or any of its officers or employees, or the failure of the City or any of its officers or employees to take action with respect to any right conferred by or any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or of any other term, covenant, or condition of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day of, 2008.				
ROLFES ENGINEERING, INC.	CITY OF LODI			
	By:Blair King, City Manager			
Ву:	Date:			
	Attest:			
Title				
	Randi Johl, City Clerk			
(CORPORATE SEAL)				
	Approved as to form:			
	D. Stephen Schwabauer, City Attorney			





#### ROLFES ENGINEERING, INC.

MECHANICAL ENGINEERS CA P.E. 21002 NV P.E. 7033

1036 W. ROBINHOOD DR., SUITE 201 • STOCKTON, CALIFORNIA 95207-5627 TELEPHONE (209) 473-2859 • (888) 393-0125 • FAX (209) 473-1312

#### STANDARD HOURLY FEE SCHEDULE

Principal Engineer\$	140.00
Principal Draftsman	120.00
Design Engineer	120.00
Design Draftsman	110.00
Senior Engineer	110.00
Senior Draftsman	105.00
Junior Engineer	90.00
Junior Draftsman	80.00
Senior Clerical	90.00
Clerical	80.00

8/1/07

#### RESOLUTION NO. 2008-

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH ROLFES ENGINEERING, INC.,
OF STOCKTON, FOR ENGINEERING DESIGN
SERVICES AND CONSTRUCTION ADMINISTRATION
FOR LIBRARY HEATING, VENTILATION, AND AIR
CONDITIONING (HVAC) AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE AGREEMENT

\_\_\_\_\_

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve a professional services agreement with Rolfe's Engineering, Inc., of Stockton, for engineering design services and construction administration for Library heating, ventilation, and air conditioning (HVAC) in the amount of \$42,640.00; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute the agreement.

Dated: March 5, 2008	8		

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute the

Reimbursement Agreement with North San Joaquin Water Conservation

**District for City Administrative Services Provided to the District** 

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute the

attached Reimbursement Agreement with North San Joaquin Water Conservation District for City administrative services provided to the

District.

**BACKGROUND INFORMATION**: For the past several years, North San Joaquin Water Conservation

District (District) has utilized the City Public Works Department administrative staff for administrative services including processing meeting minutes, distribution of Board packets, preparation of

correspondence, and District mailings (Attachment A). The Reimbursement Agreement stipulates that the District will bear the full cost of providing the services as requested by the District, including the payment of all City fees, all City staff time, purchased supplies and equipment necessary to perform the services specified in the Agreement. Annual revenues resulting from this Agreement will be approximately \$3,000.

Much of Lodi is in the District. The Agreement provides that City work has priority over District work but proper scheduling will support the timely completion of all parties' work.

FISCAL IMPACT: The City will recoup all costs for the various administrative services

associated with the North San Joaquin Water Conservation District.

**FUNDING AVAILABLE**: Not applicable.

Richard C. Prima, Jr.
Public Works Director

Prepared by Wally Sandelin, City Engineer/Deputy Public Works Director RCP/FWS/bss Attachment cc: Ed Steffani, North San Joaquin Water Conservation District

APPROVED:	
	Blair King, City Manager

#### NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT REIMBURSEMENT AGREEMENT

This Agreement is made on , 2008 by and between the City of Lodi, a municipal corporation, hereafter referred to as "CITY" and North San Joaquin Water Conservation District, hereafter referred to as "DISTRICT".

#### **RECITALS**

- A. DISTRICT wishes to SEEK the services of the CITY to complete various administrative and engineering services associated with the operations of the DISTRICT.
- B. The CITY'S policies and procedures require that the DISTRICT bear the full cost of providing the services requested by the DISTRICT including the payment of all CITY fees, payment of all CITY staff time, purchased supplies and equipment necessary to perform the engineering, legal, environmental and planning services requested by DISTRICT.

**NOW THEREFORE** in consideration of the mutual covenants made herein, the parties agree as follows:

- 1. <u>RECITALS TRUE AND CORRECT.</u> The parties agree that the "RECITALS" contained herein above are true and correct.
- 2. <u>EXPENSE REIMBURSEMENT</u>. DISTRICT will reimburse CITY for all CITY staff time, contract services, purchased supplies and equipment necessary to perform the administrative services requested by the DISTRICT. The applicable hourly rates for staff are presented in Attachment A.
- 3. <u>CITY WORK A PRIORITY</u>. DISTRICT acknowledges CITY will provide services and materials on an as-available basis. Nothing in this agreement requires CITY to provide services or grant DISTRICT needs priority over CITY needs.
- 4. <u>DISTRICT'S DEPOSIT AND PAYMENT OF COSTS</u>. Upon execution of the Agreement, DISTRICT shall deposit \$5,000.00 cash with the CITY. The CITY will hold the deposit and charge in house expenses incurred against the deposit. In the event that the deposit is drawn down to a balance of less than \$2,500.00, DISTRICT shall deposit additional funds in such amount as directed by CITY to maintain an Evergreen balance of at least \$5,000.00 ("Evergreen Deposit"). DISTRICT shall deposit the Evergreen Deposit within 15 days of receiving notice from the CITY. In the event that funds remain on deposit at the conclusion of the services contemplated by this agreement; they shall be refunded to DISTRICT.
- 5. <u>DISTRICT'S FAILURE TO PAY</u>. Should the DISTRICT fail to make any of the payments in the amounts and at the times stated in Section 4 DISTRICT'S DEPOSIT AND PAYMENT OF COSTS, the CITY may, at its option, stop all further work and not proceed until the sums due are paid. Should the DISTRICT discontinue the need for services from the CITY, the DISTRICT shall be responsible for the payment to CITY of all fees and costs incurred by the CITY at the time the services are discontinued, including such fees and costs for all work in progress but not yet billed.

- 6. <u>NO DAMAGES FOR DELAY</u>. The CITY, its officers, agents, or employees shall not be responsible or liable to the DISTRICT for any damages of any type or description which may result from any delays associated with the work whether caused by the negligence of the CITY, its officers, agents, employees, or otherwise.
- 7. <u>CALIFORNIA LAW</u>. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Joaquin, State of California, or any other appropriate court in such county, and DISTRICT covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
- 8. <u>WAIVER</u>. No delay or omission in the exercise of the right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party or any default must be in writing and shall not be a waiver of any other default concerning the same and any other provision of this Agreement.
- 9. <u>ATTORNEY FEES.</u> If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- 10. <u>INTERPRETATION.</u> The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
- 11. <u>INTEGRATION: AMENDMENT</u>. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
- 12. <u>SEVERABILITY</u>. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its validity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
- 13. <u>CORPORATE AUTHORITY</u>. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv)

the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

#### 14. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS.

- a. DISTRICT shall indemnify, defend and hold harmless the CITY, its council members, officers, agents, employees, and representatives for damage or claims for damage arising out of the acts of DISTRICT or its agents or employees, its council members, officers, agents, employees or representatives. DISTRICT'S obligation shall not extend to any award of punitive damages against the CITY resulting from the conduct of the CITY, its council members, officers, agents, employees or representatives.
- b. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, DISTRICT further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the CITY or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the CITY in any such action.

THE CITY OF LODI

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:	THE CITY OF LODI
By: Randi Johl, City Clerk	By: Blair King, City Manager
APPROVED AS TO FORM:	
By:	
	DISTRICT
	By:
	Name:
	Title:
	Address:

ATTECT

### PUBLIC WORKS ENGINEERING HOURLY RATES FY 2007/08

•	Public Works Director	\$110/Hi
•	City Engineer	\$90/Hr
•	Senior Civil Engineer	\$80/Hr
•	Senior Traffic Engineer	\$80/Hr
•	Associate Civil Engineer	\$75/Hr
•	Junior Engineer/ Senior Engineering Technician	\$60/Hr
•	Administrative Clerk	\$40/Hr
•	Assistant Engineer	\$68/Hr
•	Engineering Technician	\$55/Hr

#### RESOLUTION NO. 2008-\_\_\_\_

# A RESOLUTION OF THE LODI CITY COUNCIL APPROVING REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LODI AND NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT FOR CITY ADMINISTRATIVE SERVICES PROVIDED TO THE DISTRICT

\_\_\_\_\_\_

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Reimbursement Agreement between the City of Lodi and North San Joaquin Water Conservation District for the full cost of City administrative services provided to the District; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute the agreement on behalf of the City of Lodi.

Dated: March 5, 2008

\_\_\_\_\_

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk

#### AGENDA ITEM E-11



**AGENDA TITLE:** Authorize City Manager to Execute Agreement with InfoSend, Inc. (Fullerton, CA)

for Online Payment Services (est. \$35,000/year – ISD)

**MEETING DATE:** March 5, 2008

**PREPARED BY:** Deputy City Manager

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute agreement

with InfoSend, Inc. (Fullerton, CA) for online payment services (est.

\$35,000/year).

**BACKGROUND INFORMATION**: The City currently accepts utility payments in person at the Finance counter, via U.S. mail, and from a drop-off box in front of the Finance office. These payment methods are considered insufficient in today's environment of high technology and 24-hour customer service expectations. Staff is currently looking at expanding payment venues, including online payments, as part of the City's commitment to improved customer service and satisfaction.

The City has explored the option of Internet payments for the past several years; however, legal issues have stalled this initiative until now. At issue is a Canadian company that claims to own patent rights to a particular aspect of online utility payment processing. On advice from the City Attorney, staff has not proceeded with a recommendation while the matter is being litigated. Although the legal issues remain unsettled, staff has located a vendor who comes highly recommended, is extremely price competitive and is willing to indemnify the City of Lodi from any action taken by Telus Corporation for perceived violations of the so called "362" Patent.

Staff recommends InfoSend, Inc. because of their competitive fee structure, favorable references, turnkey technology, and their willingness to indemnify the City against any patent infringement allegations as referenced above.

This is a hosted service, meaning customers will click on a link that will redirect them to the InfoSend website. Customers will generally be unaware of this because it will look exactly like the City's website. People who wish to take advantage of the online payments feature will be required to enroll, providing basic customer information. This information is kept by the vendor, not the City. Once enrolled, people will be able to view their bill and make an online payment. Bills will be viewable for up to one year.

Enrolled customers will have a choice of payment methods, including credit card, debit card or through Automated Clearing House (ACH). They can also enroll in monthly automatic payments, or manual on demand payments. Customers may also choose to stop receiving printed statements and have their bills sent via email, or this can be done by default.

The City may also choose to have newsletters or flyers available on the payment site. This service is free if the City supplies a .PDF formatted file, or \$100 per page for other formats.

ADDDOVED:		
APPROVED: _		_
	Blair King, City Manager	
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#### **Survey of Vendors:**

Over the years staff has reviewed several online payment vendors and their respective cost structures. Here is a summary of other vendors' transaction fees:

Vendor	ACH	Credit Cards	Setup Fee
Officialpayments.com:	\$3 per transaction	3% of bill (about \$5.70)	None
InfoSend*	.25 per transaction	\$1.07\transaction (prox)	\$4,995
Alliance Data Systems	\$3 per transaction	2% plus 15 cents	\$10,000 - \$50,000

<sup>\*</sup>Recommended vendor

Staff checked InfoSend references and received favorable feedback. The City of Roseville was one of the first InfoSend clients in California. Roseville's contact gave InfoSend very high marks. Indeed, Roseville enjoys very high customer response to their online payment service, about 15 percent. The industry standard is reportedly about half that.

#### **System Highlights:**

- An online portal is created and integrated to the City's existing website that includes customer
  enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for
  detailed invoice viewing), payment initiation and history screens. A custom payment file format is
  created which facilitates the daily transfer of payment information to the City's A/R staff for
  accounts receivable reconciliation.
- The portal will be customized to look like the City's website. A user database will reside on InfoSend's servers, but customers will go to the City's website to login. This process is transparent to customers.
- Online bills are formatted to look similar to regular paper invoices.
- Customers may receive their entire invoice in full color via email. Login is only necessary to initiate a payment. Customers whose email clients do not support HTML email will see a plaintext email. A quick login will display the online bill.
- Industry-standard security methods are used to protect financial data. Internet servers are separated onto different networks in a "three-tier" architecture to safeguard data.
- Customers have the ability to pay via credit card or ACH (Automated Clearing House).

#### Summary of benefits

In addition to the City's desire to enhance customer service, following is a list of likely benefits to offering online payments:

- Reduced staff time at Finance counter
- Web-based; no special software to purchase
- 24 x 7 customer convenience
- Up to 12 months of bill history available to customers online
- Payments are transferred electronically; City system updated automatically
- Reduces paper bills being printed and sent, saving the City money
- Customers can setup auto pay

- Customers can use a variety of payment methods
- 24 x 7 technical support available
- Secure transactions
- Customers save postage
- Reduction in phone calls to Finance for balance information
- Reduction in staff time to process checks received in the mail

#### **Summary of Fees and Costs:**

One Time Setup Fee	\$ 4,995
Monthly Maintenance Fee	\$ 175
Monthly Presentment and Storage Fee*	\$ 400
Off Line Payment History	\$ FREE
Credit card charges per transaction (estimated)	\$ 1.05
ACH charges per transaction	\$ .25
Monthly fixed costs (estimated)	\$ 575
Estimated Monthly Transaction Costs**	\$ 2,100
Estimated Total Monthly Costs***	\$ 2,675

<sup>\*</sup> Includes first 2,000 bills/invoices per month for enrolled users; 11 cents for each invoice over 2000

#### **Summary:**

Staff recommends entering into an agreement with InfoSend, Inc. for online payment services. As the City endeavors to enhance customer service, allowing for online payments will likely reduce lines at the Finance window, increase payment processing efficiency and improve overall customer satisfaction. Introducing Internet payment options will also help meet growing customer expectations of 24 x 7 service delivery. Online bill presentment will also help reduce the number of customer telephone calls as clients can check account balances and review billing history via the Internet. Additional features may also be implemented in the future that will provide for electronic delivery of City newsletters and announcement literature. Finally, electronic bill presentment will help reduce postage and mailing costs.

FISCAL IMPACT:	The City	should	anticipate	annual	costs	of	about	\$35,000,	, depending	upon
	customer	enrollme	ent and utili	zation of	online	pa	yment	service. 7	The cost is lik	cely to
	be signific	cantly les	SS.							

Respectfully Submitted,	
James R. Krueger Deputy City Manager	

Prepared by: Steve Mann, Information Systems Manager

JK/SM

<sup>\*\*</sup> Based on 2000 customer payments per month. Note: Actual monthly costs may be lower, depending upon customer response. Typical customer response is about 6 – 10 percent of total customers.

<sup>\*\*\*</sup> Based on 2000 customer payments per month @ \$1.05 transaction fee, plus fixed costs



ele	ectronic paym	ent exchange	ELECTRO	ONIC TRANSAC	TION PROCESS	SSING AG	REEMENT		
Del	s Agreem ME, a S aware con 19703 (")	rporation, (	e this poration, with dba Electron	th an address at A ic Payment Exchange	of	pany") and ess at 650 N	Phoenix Pa aamans Road	d between, COMPA yment Systems, In , Suite 302, Wilming	ANY c., a gton,
will								d by its customers. rve") in order to pro	
Nov	w, therefo	ore, in cons	ideration of the	he promises contai	ned herein, it is ag	reed as foll	ows:		
1.	context	otherwise	requires. Ca		sed, but not defin			nitions apply unless hall have the respec	
		and proce	edures (the "on a national	NACHA Operatin l basis.	g Rules") that en	able deposi	itory financia	lishes the standards, l institutions to exc	hange
	В.	NACHA						system, governed be entries for particip	
	C.	Internet (	WEB) Initiat					rring or single entry om the consumer vi	
	D.	the author	rization lang ne consumer	guage displayed or	n a computer screeization and retain	een or othe a copy; and	r visual displ	lay; (2) Company s y must be able to pr	should
	E.	Banking during an	<u>Day</u> – means y part of the o	any day on which day for carrying or	n a participating fi n substantially all i	nancial dep ts banking t	functions.	ition is open to the p	_
	F.	institution ACH syst	n, to complete em usually o	e one or more price ccurs through the	or transactions, ma Federal Reserve.	ide subject	to final accou	ks of a mutual depo anting. Settlement for assoction is reflected of	or the
	O.		the Federal R		on a transfer of ra-	nas with re	speet to a train	isaction is forected.	JII <b>L</b> III
2.				nt entries initiated unt entries initiated				the NACHA Operating Day.	ating
3.	Operatir NACHA	ng Rules a A Operating	re incorporate Rules as the	ted into this Agre sey are applied and	eement by referent updated by NAC	CHA. The	agrees to kee specific dutie	I the applicable NAG ep Company advise es of Company and king.	ed of
	provide and the and regu Truth-in	any service Federal Co llations pert -Lending A	s it intends to mmunications aining to Tran act, the Electro	o offer and that it is s Commission and nsactions, including	in compliance with shall comply with s, without limitation s Act, the Federal I	h the regula all present n, the Federa	ations of the Fe and future fed al Fair Credit F	ertificates and license ederal Trade Commis deral, state and local Reporting Act, the Fe Act, as amended, and	ssion laws deral
4.	Internet Authorize from, A Authorize "untime	(WEB) In zations for ACH items zation was ly" and sh	itiated Entrie two (2) years returned by obtained. In	es) required under is after they expire. If the consumer we in accordance with	the NACHA Ope Company shall by hose account wa NACHA Operati	erating Rule ear the full as debited ng Rules, I	es and shall re liability for, a whether or r EPX shall rej	ritten Authorization etain such Consents and shall indemnify not proper Consent ect return items dee shall EPX be liable	EPX and emed
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- 5. Company shall transmit each ACH file to EPX, in accordance with EPX's rules and policies, no later than 6:30 P.M., Eastern Time one (1) Banking Day prior to the Settlement Date. Failure to do so may result in a delay in the availability of funds.
- 6. Company shall establish at EPX a reserve fund equal to at least Company's average four (4) day ACH gross dollar volume. EPX shall hold this reserve fund to offset returned ACH items and for other liabilities that Company may incur under this Agreement. If the amount of returned ACH items exceeds the balance in the refundable fee account, EPX shall fund the excess via the Merchant's operating account. Changes in reserve fund requirements will be determined by EPX according Company's ACH gross dollar volume and Company's ACH return history; any such changes shall be effective immediately. Notwithstanding the reserve fund, Company shall be liable and reimburse EPX for any returned items. The reserve fund shall be funded, maintained and/or replenished by EPX withholding from remittances hereunder. EPX may hold any or all reserve funds for a period of up to one hundred-eighty (180) Banking Days following the termination of this Agreement by either party to offset returned or disputed ACH items or other liabilities under this Agreement. After such period, any amounts remaining in the reserve fund will be promptly returned to Company.
- 7. Company represents, warrants and covenants that Company will (1) advise EPX in writing of any errors in any ACH transactions submitted hereunder; (2) conduct Company's business in an ethical manner, in accordance with this Agreement, all applicable government rules and regulations and the NACHA Operating Rules; and (3) not use, or allow Company's employees or agents, to commit any acts of fraud, dishonesty or misrepresentation.
- 8. Company hereby indemnifies EPX against any claim, loss, damage, cost, expense, attorneys' fees and liability (collectively, "Claims") incurred by EPX or third parties on account of Company's breach of this Agreement or any representations, warranties or covenants herein, other than Claims arising from EPX's negligence or willful misconduct. If at any time EPX becomes aware of, or has reason to believe that EPX may have, a Claim for indemnification hereunder, EPX has the right to refuse transmittal, and/or hold all transferred funds for a period of up to one hundred-eighty (180) Banking Days.
- 9. Company will compensate EPX for providing the services referred to herein according to the EPX rate and fee schedule. EPX shall provide Company with thirty (30) days written notification of all rate and fee changes. If such a change occurs, Company has the right to terminate this Agreement upon written notice to EPX, provided that EPX actually receives such termination notice within thirty (30) days following the date of the increase notice. A copy of the current rate and fee Schedule is attached hereto.
- 10. Either party may terminate this Agreement upon at least thirty (30) days prior written notice to the other party in the event that a party is in material breach of this Agreement (including without limitation payment obligations), and such breach is not cured within such period. EPX may immediately terminate this Agreement, or suspend transmittal hereunder, without notice to Company under any of the below listed circumstances:
  - A. Based on financial information concerning Company obtained by EPX, Company poses an unsatisfactory financial risk, as determined by EPX;
  - B. Any act of fraud, dishonesty or misrepresentation is committed by Company, its employees and/or agents or EPX believes in good faith that Company, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud, dishonesty or misrepresentation;
  - C. Any representation, warranty or application made by Company is not true and correct in all material respects;
  - D. Company files a petition, or has a petition filed against it under any bankruptcy or insolvency law, or is otherwise unable to pay its debts as they become due; or
  - E. Company fails to provide financial statements in a format reasonably acceptable to EPX within three (3) days of EPX's written request.
  - F. Company's reason entry codes for unauthorized transactions are equivalent to or exceed NACHA Operating Rules for reason entry codes pertaining to such transaction thresholds.
  - G. Company is not within the parameters set forth in the EPX Underwriting Terms and Conditions.

EPX may selectively terminate one or more of Company's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Company incurred or existing under this Agreement prior to termination shall survive the termination.

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- 11. In the event Company incurs any loss due to the mishandling of a particular file by EPX, EPX's liability to Company shall be limited to the actual direct damages incurred by it resulting from EPX's negligence or misconduct, and shall in no event exceed the amount represented by the applicable transaction record, less the fees payable to EPX under this Agreement. In addition, EPX, its affiliates and agents shall not be liable for any incidental, consequential, reliance or special damages in any way connected or arising out of this Agreement or the services provided hereunder. EPX HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 12. In the event an agent of Company delivers any entry or file of entries to EPX, EPX may act in reliance on such entry or file of entries, and it need not inquire of Company as to whether the agent is duly authorized. Company shall be fully liable for the acts and omissions of its agents hereunder.
- 13. This Agreement shall commence on the date first specified above and shall remain in effect for a period three (3) years. This Agreement shall automatically renew for successive one (1) year terms unless either party provides written non-renewal notice to the other at least ninety (90) days prior to the end of the then current term.
- 14. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware without regard to its conflicts of law rules. The parties agree that any dispute arising out of and/or in the course of the relationship established by this Agreement, or by the Agreement itself, shall be decided, unless mutually resolved by the parties hereto, in the state and federal located in the State of Delaware, and, the parties hereby submit to said jurisdiction and venue.
- 15. In the event that any action is filed in relation to this Agreement or the relationship created hereby, the unsuccessful party in the action shall pay to the successful party, in addition to all sums awarded by the court, actual costs and expenses for the successful party's attorneys' fees.
- 16. All notices hereunder shall be in writing, in English, and shall be deemed properly given when (1) sent by certified mail, return receipt requested, (2) sent by fax with confirmation of receipt by telephone, or (3) delivered by a nationally recognized overnight delivery service, to the addresses listed herein for the respective parties. A party may change such address by written notice to the other party hereto in accordance with this section at least thirty (30) days prior to the initial use of the revised address.
- 17. If any provision of this Agreement or any application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction or unenforceable to any extent, the remainder of the Agreement and the application thereof to other persons or circumstances shall not be affected thereby and shall be limited or modified to the minimum extent necessary to be enforceable.
- 18. This Agreement may not be assigned by Company without the prior written consent of EPX. EPX may assign this Agreement without limitation. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 19. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing and signed by each party or an authorized representative of each party. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
- 20. The undersigned hereby personally guarantees each and every obligation created by this Agreement. In the event Company fails to pay any fees, charges, ACH returns, fines or any other charges, the undersigned shall be personally responsible for payment, and if such payment is not made, EPX may seek a judgment against the undersigned in any court of competent jurisdiction.

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Date		
Date	<u></u>	
Date		
	Date	Date

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**Pricing** 

Item Description	Fee
Set-up Fee	\$00.00
ACH Transactions	\$0.25
ACH Return/Reject Fee	\$0.45
Monthly Minimum	\$00.00

Initials \_\_\_\_\_



# The Bancorp Bank

#### MERCHANT AGREEMENT

Phoenix Payment Systems, Inc. doing business as Electronic Payment Exchange, a Delaware Corporation, whose address is 650 Naamans Road, Suite 302, Claymont, DE 19703 ("EPX"), The Bancorp Bank ("Bank"), a Delaware Corporation, whose address is 405 Silverside Road, Suite 105, Wilmington, DE 19809 and COMPANY NAME, a STATE Corporation whose address is ADDRESS ("Merchant"), agree as follows:

- 1. <u>Definitions</u>. For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
  - 1.1. "Address Verification" shall mean a service which allows Merchant to verify Cardholder's billing address with Issuer.
  - 1.2. "Association(s)" shall mean VISA USA, Inc. and MasterCard International, Inc.
  - 1.3. "Authorization" shall mean an affirmative response by or on behalf of an Issuer, to a request to the EPX System to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
  - 1.4. "Business Day" shall mean any day other than:
    - i. Saturday or Sunday;
    - ii. A day on which banking institutions in Delaware are authorized by law or executive order to be closed (and on which Bank and/or EPX is in fact closed); or
    - iii. A day on which the Federal Reserve Bank is closed.
  - 1.5. "Card(s)" shall mean either a Visa or MasterCard credit card or debit card.
  - 1.6. "Cardholder" shall mean a person authorized to use a Card.
  - 1.7. "Card-Not-Present" shall mean mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.
  - 1.8. "Card-Present Transaction" shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip.
  - 1.9. "Chargeback" shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
  - 1.10. "CVV" shall mean a service which allows Merchant to verify Cardholder's possession of Card through the identification of unique digits on Card.
  - 1.11. "EPX System(s)" shall mean payment processing platform.
  - 1.12. "Forced Sale" shall mean a sales Transaction processed without an approved electronic authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
  - 1.13. "Issuer" shall mean an Association member that issued a Card to a Cardholder.
  - 1.14. "IVR" shall mean interactive voice response unit used for an Authorization.
  - 1.15. "Manuals" shall mean the EPX System and Software associated API guides, manuals and instructions.

- 1.16. "Merchant Servicer" shall mean non-members other than the Merchant and EPX that receive, pass, or store transaction data on their internal systems on behalf of the Merchant. This includes third party servicers, Web hosting companies, shopping cart providers, and media back-up companies. Merchant Servicers must be registered with Visa by Bank.
- 1.17. "Merchant Statement" shall mean an itemized monthly statement of all charges and credits to the Operating Account.
- 1.18. "Operating Account" shall mean a demand deposit account at Bank, or other approved financial institution through which fees, charges and credits due in accordance with this Agreement may be processed.
- 1.19. "Pre-Authorized Recurring Order Transactions" shall mean Transactions which have been preauthorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
- 1.20. "Reserve Account" shall mean an account at Bank for all future liabilities of Merchant to Bank or EPX which may arise out of this Agreement.
- 1.21. "Services" shall mean the transaction processing services provided by Bank or EPX under this Agreement.
- 1.22. "Software" shall mean any software programs provided by EPX.
- 1.23. "Transaction" shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the transaction is approved, declined, or processed as a Forced Sale. "Transaction" also includes credits and voids.

#### 2. Merchant Obligations and Requirements.

- 2.1. Merchant Card Processing. Merchant is in the business of selling and/or leasing goods and/or providing services to its customers. To better serve those customers, Merchant has requested and Bank and EPX has agreed to permit Merchant's participation in the card processing programs and services. Without the prior written consent of Bank and EPX, Merchant is not authorized to process Transactions for payment for any other type of goods or services. Bank and EPX reserves the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Transaction which Merchant may process. Failure to follow these limits, which may be amended from time to time, will be a default under this Agreement. Merchant agrees to participate in the credit card processing services program established by Bank and EPX.
- 2.2. <u>Merchant Account Changes</u>. Merchant shall provide the information required by the Merchant Profile Setup Form provided to Merchant by EPX and shall promptly notify EPX of any changes in this information.
- 2.3. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish an Operating Account. Merchant authorizes Bank or EPX to debit all amounts Merchant owes Bank or EPX herein from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank or EPX through the ACH Banking Network or by a manual debit of the account. Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against Bank or any other financial institution where the Operating Account is maintained.

- 2.4. Reserve Account. Upon execution of this Agreement, Bank or EPX may establish a Reserve Account for all future liabilities of Merchant to Bank or EPX which may arise out of this Agreement, including, but not limited to, Chargebacks, fines and fees. Bank or EPX shall inform Merchant of the initial amount required for the Reserve Account at the commencement of this Agreement. The Bank or EPX may change the amount of the Reserve Account as reasonably necessary and Merchant shall be immediately notified of such change. The Reserve Account may be funded by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The Reserve Account will be maintained for a minimum of six (6) months from the termination date of this Agreement or until such time as Bank or EPX determines that the release of the funds to Merchant is prudent, commercially reasonable and Merchant's account with Bank and EPX is fully resolved. Upon expiration of this six (6) month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank or EPX will inform Merchant in writing of any charges debited to the Reserve Account during this period.
- 2.5. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, EPX shall fund the excess via Merchant's Reserve Account and/or Operating Account. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this paragraph. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any no-cash refund policy, in store credit only. Merchant shall follow Association reservation/no-show policy. Merchant must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified at the time of the reservation of the exact number of days required for reservation deposit refunds.
- 2.6. <u>Customer Complaints</u>. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. Bank and EPX reserve the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:
  - i. The Cardholder's name;
  - ii. A unique confirmation number (transaction sequence number, or other identifier) that the Merchant can use to reference the transaction in subsequent communications with the Bank or EPX;
  - iii. The date and time the Cardholder asserted the claim or defense;
  - iv. The nature of the claim or defense; and
  - v. The action which Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within ten (10) days.

2.7. <u>Auditing and Credit Investigation</u>. Bank or EPX may audit Merchant's compliance with the terms of this Agreement. Merchant shall deliver such information within ten (10) days after Bank's or EPX's request, including without limitation, periodic financial statements and information pertaining to Merchant's financial condition, in a format reasonably acceptable to Bank and EPX. Such information shall be true, complete and accurate. Merchant authorizes parties contacted by Bank or EPX to release credit information requested by Bank or EPX and Merchant agrees to provide a separate authorization for release of credit information if requested.

- 2.8. Exclusivity. Merchant shall submit all Card Transactions for the particular entity, dba or web property processed by Bank and EPX during the term hereof solely to Bank and EPX for processing. If Merchant fails to comply with this provision, Merchant agrees to pay Bank or EPX, a liquidated damages sum within ten (10) days of the date of non compliance. The amount shall equal the greater of
  - i. \$250; or
  - ii. 80% of the product of:
    - 1. The average net monthly fees; and
    - 2. The number of months, including any pro rata portion of a month, then remaining prior to the date on which Merchant may terminate this Agreement in accordance with it terms.

Merchant agrees that the damages suffered as a result of such non compliance would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above. Any exceptions to this exclusive arrangement must be approved by Bank and EPX in advance in writing.

- 2.9. Retention of Original Sales Information. Merchant shall retain the information required by Paragraphs 9.1 (Documenting Transactions) and 9.2 (Authorization for Transactions) for three (3) years from the date of the Transaction. At the request of Bank or EPX, Merchant shall provide such information to Bank or EPX, as directed by Bank, within five (5) days of receipt of request. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.
- 2.10. EPX Systems. Merchant acknowledges that its use of the EPX Systems and Software is in accordance with the terms of the Manuals supplied by EPX and within the terms of the license granted by EPX, if such license is granted. Any Software supplied to Merchant by EPX is owned by EPX. It is licensed to Merchant and not sold. The Manuals are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Merchant is prohibited from copying the Software or Manuals related to the EPX System and Software. Merchant shall not sell, lease, encumber or otherwise dispose of the Software or Manuals. Merchant acknowledges that the EPX Systems and Software requires suitable computer hardware to function properly.

# 3. EPX Obligations and Requirements.

- 3.1. EPX to Provide Services to Merchant. During the term of this Agreement, subject to the terms and conditions of this Agreement, EPX agrees to provide EPX Systems, Software and Manuals in order to allow Merchant to accept and process Transactions. EPX shall provide EPX Systems technical support 24 hours per day, 7 days per week, in accordance with EPX's then-current policies. EPX shall provide customer support for all Merchant Transactions, including authorization, settlement, chargeback processing and reporting from 8:30 a.m. to 6:00 p.m. Eastern time, Monday through Friday, excluding EPX holidays, in accordance with EPX's then-current policies.
- 3.2. <u>Data Connection</u>. In the event Merchant requires the installation of a dedicated data connection for electronic transmissions to EPX, Merchant will sign a separate agreement, EPX Third Party Connection Agreement, which provides policy and guidelines for the use of network and computing resources associated with the data connection. Merchant shall make arrangements for such installation and the maintenance thereof with EPX. EPX shall coordinate the installation and maintenance of the dedicated data connection. Merchant shall pay EPX for all costs related to the installation and maintenance of the dedicated data connection.

### 4. Bank Obligations and Requirements.

4.1. <u>Bank to Provide Services to Merchant</u>. Bank agrees to sponsor Merchant's acceptance of Cards for Transactions. Bank and EPX, as applicable, agree to provide Merchant with the Services indicated on

Schedule A, as amended from time to time by Bank or EPX, during the term of this Agreement, subject to the terms and conditions of this Agreement.

# 4.2. <u>Daily Reconciliation of Transactions</u>.

- i. <u>Electronically Transmitted Transactions</u>. Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant by a credit to the Operating Account equal to the reconciled summary of Merchant's total summary Transactions since the previous credit. This credit will be net of following charges:
  - 1. The sum of all Cardholder charges denied, refused or charged back;
  - 2. All refunds processed on account of Cardholders during said time period;
  - 3. All taxes, penalties, charges and other items incurred by Bank or EPX that are reimbursable pursuant to this Agreement; and
  - 4. All rates, fees and charges in Schedule B.
- ii. <u>Provisional Credit</u>. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant for at least one (1) but not more than ten (10) Business Days from the processing date of a Transaction.
- 4.3. <u>Merchant Statement</u>. Bank or EPX shall make available a Merchant Statement on a daily and monthend basis. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within thirty (30) days of the date of the Merchant Statement. Delivery of the Merchant Statement shall be in electronic form.
- 4.4. <u>Chargebacks</u>. Bank shall be authorized to charge back to Merchant any Transactions as specified throughout this Agreement and/or under any of the following circumstances:
  - i. Card-Not-Present Transactions;
  - ii. As otherwise indicated in this Agreement, or
  - iii. As follows:
    - 1. No specific prior authorization for the Transaction was obtained from the EPX System;
    - 2. The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled and Merchant was so notified prior to the Transaction:
    - 3. The Card giving rise to the Transaction was cancelled and prior to, or at the time of, the Transaction, Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
    - 4. The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
    - 5. The information required in Paragraphs 9.1 (Documenting Transactions) and 9.2.iii (Card-Not-Present Transactions) was not submitted to Bank;
    - 6. Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder:
    - 7. The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction:
    - 8. A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction:
    - 9. The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
    - 10. The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
    - 11. A Transaction is charged back by an Issuer; or

12. Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Bank shall recover the amount of the Transaction from either aforementioned account. Merchant agrees that Bank, without prior notice to Merchant, may:

- 1. Charge the amount of the Transaction to the Operating Account or Reserve Account;
- 2. Recoup the amount of the Transaction by adjustment of the credits due to Merchant; or
- 3. Set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant.

If Merchant disagrees with Chargeback Transaction, Merchant must so notify Bank in writing within ten (10) days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

## 5. Compliance.

- 5.1. <u>Associations' and Issuers' Requirements</u>. Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. EPX agrees to keep Merchant advised of Association rules and regulations as they are applied.
- 5.2. <u>Use of Marks</u>. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through EPX. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
- 5.3. <u>Payment Card Industry Security Requirements</u>. Merchant agrees to be PCI compliant, as amended by the Associations from time to time.
  - i. Visa and MasterCard have implemented a program to ensure the protection of cardholder data, whether processed or stored, through a program of validation and compliance. Known as PCI, information about the program and specific requirements can be obtained at www.visa.com/cisp. The program is comprised of 12 major requirements:
    - 1. Install and maintain a firewall configuration to protect data
    - 2. Do not use vendor-supplied defaults for system passwords and other security parameters
    - 3. Protect stored data
    - 4. Encrypt transmission of cardholder data and sensitive information across public networks
    - 5. Use and regularly update anti-virus software
    - 6. Develop and maintain secure systems and applications
    - 7. Restrict access to data by business need-to-know
    - 8. Assign a unique ID to each person with computer access
    - 9. Restrict physical access to cardholder data
    - 10. Track and monitor all access to network resources and cardholder data
    - 11. Regularly test security systems and processes
    - 12. Maintain a policy that addresses information security
  - ii. In the event of a security intrusion, Merchant agrees to fully cooperate with a third party approved Payment Card Industry assessor and/or representative to conduct a thorough security review and validate compliance with the Payment Card Industry Data Security Standards (PCI) for protecting Cardholder data;
  - iii. Merchant is responsible for security of Cardholder data in possession;
  - iv. Bank, EPX, Merchant and each payment card brand have ownership of Cardholder data and may use such data ONLY for assisting these parties in the completion of Transactions, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law;

- v. In the event this Agreement is terminated by any of the parties, each party agrees to continue to treat account holder data as confidential;
- vi. Immediately notify Visa USA Risk Management, through its acquirer, of the use of a Merchant Servicer; and
- vii. Ensure the Merchant Servicer implements and maintains all of the security requirements, as specified in the PCI program.
- 5.4. <u>Use of EPX Systems</u>. Use of software programs approved by EPX and related equipment installed or improved by EPX for use with the EPX System, will be subject to the following:
  - i. Merchant will use and operate the EPX Systems only in accordance with Manuals, as amended from time to time by EPX;
  - ii. If Merchant is using EPX-provided software, Merchant will install, use and operate the Software only in accordance with the Manuals, as amended from time to time by EPX;
  - iii. In processing Transactions, Merchant shall use only software programs, file formats and processing methods that have been approved and certified by EPX's Integration staff; and
  - iv. Merchant shall be responsible for the custody and control of all passwords provided by EPX to Merchant to access the EPX reporting system.
- 5.5. Compliance with Applicable Law. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, as applicable.
- 5.6. Web Site Requirements for E-Commerce Merchants. A web site operated by the Merchant that accepts Card Transactions must contain all of the following information:
  - i. Complete description of the services offered;
  - ii. Return merchandise and refund policy; which includes the communication of the return policy during the order process and the requirement that the cardholder must be allowed to select a "click to accept" option of other affirmative button to acknowledge the policy;
  - iii. Terms and conditions must be displayed on the same screen view as the checkout screen used to present the total purchase amount; or
  - iv. Within the sequence of web pages the cardholder accesses during the checkout process.
  - v. Customer service contact including e-mail address or telephone number;
  - vi. Transaction currency;
  - vii. Export or legal restrictions;
  - viii. Delivery policy;
  - ix. Consumer data privacy policy;
  - x. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
  - xi. Address of the Merchant outlet's permanent establishment, including the Merchant outlet country;
    - 13. On the same screen view as the checkout screen used to present the total purchase amount; or
    - 14. Within the sequence of web pages the Cardholder accesses during the checkout process.

#### 6. Term.

6.1. <u>Term.</u> This Agreement shall become effective when signed by all parties and, unless sooner terminated in accordance with this Agreement, shall remain in effect for a term of five (5) years. This Agreement shall renew automatically for successive terms of two (2) years each, unless any party provides written notice of termination to the other parties at least 120 days prior to the end of the then current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into

before such termination shall remain in full force and effect and Merchant shall remain liable for all obligations to Cardholders, Bank, and EPX incurred while this Agreement was in effect.

- 6.2. <u>Termination of Agreement by Bank or EPX</u>. Bank or EPX may terminate this Agreement upon thirty (30) days prior written notice to Merchant under any of the below listed circumstances. During this period the Merchant shall have the opportunity to cure the default.
  - Chargebacks exceed the Association guidelines, or appear to be the result of fraudulent Transactions as defined by the Association. EPX will provide Merchant with information defining the Association guidelines;
  - ii. Breach of this Agreement by Merchant; or
  - iii. Merchant fails to provide accurate financial statements suitable to Bank or EPX in a timely manner upon request.

Bank and/or EPX may terminate this Agreement immediately, in the following circumstances:

- i. In the opinion of Bank or EPX there is a substantial negative change in the Merchant's business or financial position;
- ii. Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or Bank or EPX believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation in connection with transaction processing;
- iii. Any representation or warranty made by Merchant in this Agreement or the Application for Services herein that is not true and correct, in a material respect;
- iv. Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank or EPX herein; or
- v. Merchant files a petition under any bankruptcy or insolvency law.

Bank or EPX may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of the card Transaction.

- 6.3. Termination of Agreement by Bank. If the Bank's management, board of directors or legal counsel determines that the continued performance by the Bank of its obligations under this Agreement is not consistent with safe and sound banking practices and if the parties are unable to agree upon modifications to this Agreement that eliminate the relevant banking concerns or cure the violation or potential violation of said banking practices, the Bank shall have the right to terminate this Agreement on not less than ninety (90) days' prior written notice by providing written notice to Merchant. Any written notice provided to Merchant by the Bank pursuant to this section shall specify the date on which this Agreement shall terminate, which date shall be selected by the Bank in an effort to provide to Merchant as much advance notice of such termination as is reasonably practicable, consistent with safe and sound banking practices.
- 6.4. <u>Termination of Agreement by Merchant</u>. Merchant may terminate this Agreement upon at least thirty (30) days prior written notice to the other parties if:
  - i. Bank or EPX amends Schedule B pursuant to Paragraph 10.16.ii (Amendment to Fees and Charges) to increase the rates, fees or charges Merchant pays herein in excess of 5% in any given contract year, except for increases in Association fees or rates, or rates raised in accordance with Paragraph 10.16.iii (Volume Adjustments);
  - ii. Any material amendment or modification to this Agreement made by Bank or EPX that adversely affects Merchant in a material respect (excluding material amendments or modifications required due to changes in Association Regulations or applicable federal, state or local law or regulation); or

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iii. Bank or EPX materially breaches a material provision of this Agreement and fails to cure such breach within such thirty (30) day period. Bank is not obligated to provide replacement Services if EPX does not or cannot perform.

Merchant's right to terminate pursuant to this Paragraph 6.4.i or 6.4.ii shall expire thirty (30) days following the receipt of notice to any such increase or material amendment of modification.

# 7. Merchant Billing.

- 7.1. Fees. Merchant shall pay all fees, including, but not limited to monthly service fees, Chargebacks and set-up fees as specified on and in accordance with Schedule B, as amended by Bank and EPX. Bank and EPX shall provide the Merchant with reasonable notification of all fee or rate changes, including any Association fee or rate changes. Merchant also agrees to pay Bank or EPX the amount of any fees, charges or penalties assessed against Bank or EPX by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties.
- 7.2. <u>Taxes</u>. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. If Bank or EPX funds any taxes, interest, fine or penalties that are the responsibility of the Merchant, Bank or EPX shall be immediately charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to Merchant.
- 7.3. <u>Billing</u>. All amounts Merchant owes Bank and EPX may be charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to Merchant.

#### 8. Liability and Indemnification.

- 8.1. <u>Conversion</u>. Bank will have no liability to Merchant if any conversion is delayed or cannot be completed. EPX will not have liability to Merchant if any conversion is delayed or cannot be completed unless due to the gross negligence of EPX;
- 8.2. <u>EPX System</u>. EPX will have no liability to Merchant if the EPX System or Software fails to operate because of:
  - i. Merchant's inappropriate, inadequate or faulty computer hardware;
  - ii. The failure of Merchant, its employees or agents to operate the EPX System or Software properly in accordance with the instructions provided by EPX; or
  - iii. The neglect or misuse of the EPX System or Software by Merchant, its employees or agents.

If the EPX System or Software fails to operate for any other reason not attributable to Merchant, the liability of EPX shall be limited as set forth in the applicable license agreement for the Software. Bank shall have no liability to Merchant for the EPX System or Software.

- 8.3. <u>Limitation of Liability</u>. Neither Bank nor EPX shall be liable to Merchant or Merchant's customers or any other person for any of the following:
  - Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
  - ii. Any loss caused by a Transaction downgrade resulting from defective or faulty software regardless if owned by Bank, EPX or Merchant;
  - iii. The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, EPX or any other person for any reason; or
  - iv. Interruption or termination of any Services caused by any reason except for the gross negligence of EPX; and in such case, any liability shall be solely that of EPX and the liability of EPX shall be limited to a full or partial waiver of terminal or Software fees due under this Agreement.

- 8.4. <u>Limitation on Damages</u>. In no case shall Merchant be entitled to recover damages from EPX or Bank which exceed the fees retained by Bank and EPX pursuant to this Agreement during the one (1) month period immediately prior to the event giving rise to the claim for damages.
- 8.5. <u>Indemnification</u>. Merchant agrees to indemnify and hold Bank and EPX harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of or affiliates, Bank or Bank's affiliates or EPX or EPX's affiliates) arising out of any of the following:
  - i. Merchant's failure to comply with this Agreement;
  - ii. Any act or omission of Merchant;
  - iii. Merchant's failure to comply with the Manuals;
  - iv. Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
  - v. Merchant's failure to comply with any applicable law, rule or regulation;
  - vi. Any Cardholder dispute concerning the quality, condition or delivery of any Merchant merchandise or the quality of performance of any Merchant service;
  - vii. The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
  - viii. Merchant's selection of an Internet service provider or other telecommunication services provider;
  - ix. The theft of, misuse of, damage to or destruction of any Software; or
  - x. Card-Not-Present Transactions, unauthorized Transactions or prohibited Transactions.

NEITHER BANK NOR EPX SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR EPX PURSUANT TO THIS AGREEMENT.

MERCHANT ACKNOWLEDGES THAT NEITHER BANK NOR EPX HAS PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, WITH RESPECT TO ANY SOFTWARE INSTALLED OR PROVIDED BY EPX. BANK HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE. NEITHER BANK NOR EPX MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR EPX'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND EPX'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALLY REASONABLE.

#### 9. Collection and Use of Transaction Information.

- 9.1. <u>Documenting Transactions</u>. Merchant shall submit the following information to Bank in connection with Transaction processing:
  - i. The DBA name of Merchant, name of Merchant and Merchant's address;
  - ii. Merchant customer service telephone number;
  - iii. Merchant Internet address;
  - iv. Merchant Number assigned by Bank;
  - v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card:
  - vi. Name, address and telephone number of Cardholder; and
  - vii. Such additional information as may be required by Bank, EPX and/or the Associations, from time to time.

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant must not transmit a Transaction

to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

- 9.2. Authorization for Transactions. Merchant shall obtain Authorization of Transactions as follows:
  - i. <u>Electronically Transmitted Transaction</u>. Merchant shall submit each Transaction for Authorization to the EPX System. The EPX System shall respond with the Issuer's authorize or decline to a Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Transaction.
  - ii. <u>Card-Present Transactions</u>. The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Transaction may be manually authorized. In that case, the Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and Merchant shall be subject to an additional IVR authorization fee as outlined in Schedule B.
  - iii. <u>Card-Not-Present Transactions</u>. The following additional requirements apply to Card-Not-Present Transactions:
    - 1. All Card-Not-Present Transactions are at Merchant's risk. As to each, Card-Not-Present Transactions Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant, Merchant shall pay Bank the amount of the Transaction, any Chargeback fee in Schedule B, plus any Association fine or assessment. Bank may charge the Transaction to the Operating Account or Reserve Account without prior notice to Merchant:
    - 2. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required in Paragraph 9.1 (Documenting Transactions), also shall indicate: an authorization code, if required; customer address and address verification; and in lieu of Cardholder's signature, a notation of (a) mail order, (b) telephone order, (c) e-commerce order, or (d) pre-authorized order, on the signature line;
    - 3. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once a year. Merchant shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Bank that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and
    - 4. Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall perform Address Verification and only accept as approved those Transactions receiving at least a partial match or system unavailable response.
- 9.3. <u>Prohibited Transactions</u>. Merchant shall not do any of the following with respect to any Transaction:
  - i. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
  - ii. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
  - iii. Establish a minimum or maximum dollar Transaction amount;
  - iv. Obtain multiple authorizations for amounts less than the total credit sale amount;
  - v. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
  - vi. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;

- vii. Transmit or accept for payment any Transaction which was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in Merchant's application for card processing services initially submitted to and approved by Bank;
- viii. Honor or accept a Card as payment for any legal services or expenses arising out of or related to (1) the defense of any crime other than a traffic violation; (2) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (3) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors:
- ix. Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- x. Redeposit a previously charged Transaction, regardless of whether Cardholder consents;
- xi. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- xii. Use the EPX System or Software and any data received thereon for any other purpose except for determining whether or not Merchant should accept Cards in connection with a current sale or lease of goods or services;
- xiii. Use the EPX System or Software and data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- xiv. Draw or convey any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card is processed as non-accepted;
- xv. Disclose any information obtained through the EPX System or Software to any person except for necessary disclosures to affected Cardholders, Bank, EPX and/or the Issuer;
- xvi. Add any tax to Transactions unless applicable law expressly requires that Merchant collect such a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- xvii. Disburse funds in the form of traveler's checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- xviii. Disburse funds in the form of cash, except:
  - 1. In the case of a cashback Transaction and in such case the cashback portion of the Transaction is the only portion disbursed as cash; or
  - 2. Merchant is dispensing funds in the form of traveler's checks, Visa TravelMoney Cards or foreign currency. In this case, the Transaction amount is limited to the value of said form of dispensation plus any fee or commission charged to the Merchant.
- xix. Accept a Card to collect or refinance an existing debt;
- xx. Issue a Transaction credit for return goods or services acquired in a cash transaction;
- xxi. Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale;
- xxii. Require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed; or
- xxiii. Accept Visa Card or Visa Electron Card for the purchase of scrip.

### 9.4. Disclosure and Storage of Transaction Information.

- i. A Merchant must not disclose a Card account number, personal information, or other Transaction information to third parties other than to Merchant Servicers, the Bank, or EPX for the sole purpose of:
  - 1. Assisting the Merchant in completing the transaction; or
  - 2. As specifically required by law.
  - 3. Merchant may only disclose Transaction information to approved third parties for the sole purpose of:
    - a. Supporting a loyalty program; or
    - b. Providing fraud control services.

- ii. A Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and:
  - 1. Render all data unreadable prior to discarding;
  - 2. The Merchant must not retain or store full contents of any track on the magnetic stripe subsequent to a Transaction;
  - 3. The Merchant must not retain or store CVV data subsequent to Authorization of a Transaction;
  - 4. The Merchant must not request the CVV data on any paper form.
- ii. The sale or disclosure of databases containing cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
- 9.5. <u>Use and Disclosure of BIN Information</u>. A Merchant that receives BIN information from Bank or EPX must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

## 10. General Provisions.

- 10.1. <u>Confidentiality</u>. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to EPX and to Issuers.
- 10.2. <u>Independent Contractor</u>. In the performance of its duties herein, each party shall be an independent contractor, not an employee or agent of another party.
- 10.3. <u>Cooperation</u>. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.
- 10.4. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
- 10.5. <u>Assignment</u>. This Agreement may not be assigned by Merchant without the prior written consent of Bank and EPX. Bank and/or EPX may assign this Agreement without limitation. Assignment of this Agreement by Bank or EPX shall relieve such party of any further obligations under this Agreement.
- 10.6. <u>Captions</u>. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- 10.7. <u>Financial Accommodations</u>. Bank, EPX and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.
- 10.8. <u>Governing Law</u>. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to internal principles of conflict of laws, and federal law.
- 10.9. <u>Power of Attorney</u>. Merchant appoints Bank and EPX as its attorneys-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. The appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or EPX.
- 10.10. Attorney's Fees. If Bank or EPX takes legal action against Merchant for any Chargebacks or any amounts due Bank or EPX herein, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or EPX, whether suit is commenced or not.

- 10.11. <u>Setoff.</u> In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or EPX may set off any amounts due to Bank and/or EPX under this Agreement against any property of Merchant in the possession or control of Bank or EPX.
- 10.12. No Waiver. Any delay, waiver or omission by a party to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- 10.13. Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank or EPX for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's or EPX's rights or claims under this Agreement.
- 10.14. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.
- 10.15. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- 10.16. <u>Amendments to this Agreement</u>. From time to time Bank and/or EPX may amend this Agreement as follows:
  - i. Amendment to Cards and/or Services. Bank and/or EPX may amend or delete Cards or Services listed in Schedule A by notifying Merchant in writing of any amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank or EPX shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank or EPX has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
  - ii. Amendment to Fees and Charges. From time to time, Bank and/or EPX may change all rates, fees and charges set forth in Schedule B. Bank or EPX will provide written notice to Merchant of all amendments. Notice may be given on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Paragraph 6.4 ("Termination of Agreement by Merchant").
  - iii. <u>Volume Adjustments</u>. Bank or EPX may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in Merchant's application for card processing services initially submitted to and approved by Bank and EPX.
- 10.17. <u>Notices</u>. Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party herein shall be in writing and each shall be deemed to have been properly given
  - i. When served personally on an officer of the party to whom such notice is to be given;

- ii. Upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt; or
- iii. Upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to Bank: **The Bancorp Bank**405 Silverside Rd.
Suite 105

Wilmington DE 1086

Wilmington, DE 19809

If to Merchant: COMPANY NAME COMPANY ADDRESS

If to EPX:
Electronic Payment Exchange
650 Naamans Rd.
Suite 302

Claymont, DE 19703

S

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforementioned.

By signing below, the parties agree to the terms of this Agreement. If Merchant is a corporation, its proper corporate officers sign. This Agreement may be signed in one or more counterparts and all signed agreements shall be considered as one.

Agreed to and accepted on:, 20	00	
The Bancorp Bank		
The Bancorp Bank		Merchant COMPANY NAME
By:Authorized Representative	Ву:	Name, Title
Title:	Ву:	Name, Title



### **Electronic Payment Exchange**

By:		
J	Authorized Representative	
Title:		

# SCHEDULE A CARDS, SERVICES AND EQUIPMENT/SOFTWARE

#### 1. Cards Available to Merchant.

1.1. Bank and EPX currently provides Card services from the following card issuers: Visa and MasterCard transaction processing services. EPX also provides authorization services for American Express, Diners Club, JCB and Discover.

### 2. Services Available to Merchant.

- 2.1. As of the date of this Agreement, Merchant has requested use of the following services:
  - i. Authorization services for Visa, MasterCard, American Express, Diners Club, JCB and Discover Card
  - ii. Transaction processing services for Visa and MasterCard
  - iii. Cardholder Address Verification
- 2.2. The services provided by the EPX System will be available to Merchant 24 hours a day, 7 days a week. Every effort will be made to keep the system operational except for normal maintenance, which will normally occur during off peak hours. The telephone number of the IVR is 866-660-7065.

### 3. Access Methods.

- 3.1. EPX shall provide the following access method(s) to Merchant:
  - i. HTTPS Post
  - ii. SSL Streamed Socket
  - iii. Batch File via SFTP
  - iv. Dial-up
  - v. IVR

# SCHEDULE B RATES, FEES AND CHARGES

- 1. "Mid-Qualified Transactions" shall mean (i) key-entered retail Transactions, (ii) Visa telephone or mail Transactions without Address Verification; any MasterCard telephone or mail Transaction, or (iii) any Transaction designated as such by the processor listed on Schedule A.
- 2. "Non-Qualified Transactions" shall mean (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred, (ii) any Transaction missing required data, or (iii) any Transaction designated as such by the processor listed on Schedule A.
- 3. "Qualified Transactions" shall mean (i) retail transactions in which the Card is swiped, (ii) Visa telephone or mail Transactions with Address Verification, or (iii) Transactions that are part of a special registered program approved by the Associations, or (iv) e-commerce Transactions which CVV2 and AVS processing requirements are transmitted and sent within 48 hours of Authorization.
- 4. IVR authorization fees for CP.

Note: Add AVS Only Fees.

EPX Item type	Processing Fee or Fee					
Merchant Account Statement Fee	\$15.00/mth					
Pinless debit (Debit cards offer the	Residential: \$0.55 + \$0.25 per transaction- the EPX					
convenience of paying out of a	system will automatically route debit transactions based					
checking account for the customer	on dollar amount to the debit networks or the credit card					
and the advantage to you that they are	networks to obtain the rate that is most favorable to the					
authorized and cleared immediately	City.					
like a credit card as opposed to going	G					
through the ACH with a 48 clear like	Commercial: \$2.00 + \$0.25 per transaction					
a check)						
Credit Card Transactions (Visa &						
masterCard)						
1. Utility Discount Rate	\$0.75 + Assessment pass through (currently 9.25 (visa) or					
Transactions- Residential	9.5 basis points (M/C) as set by CC companies + \$0.25					
Transactions Residential	EPX fee					
2. Utility Discount Rate	\$1.50 + Assessment pass through (currently 9.25 (visa) or					
Transactions- Commercial	9.5 basis points (M/C) as set by CC companies + \$0.25					
	EPX fee					
3. Non-Qualifying CC	Straight Visa or MasterCard Interchange & Assessment					
transactions	fee pass through + 25 basis points from EPX					
dansactions	ree pass unough + 23 basis points from Li A					

Note: The Visa and MasterCard fees are subject to change by the card companies themselves. These changes are beyond the control of either EPX or InfoSend. Changes generally are done in April and October of every year and may move fees down, up, or keep them stable.

# COMPANY NAME CERTIFICATE

partners (circle one) of the Company:

Agreement;

\_\_\_\_\_, the duly elected, qualified and acting \_\_\_\_\_

The following resolutions were duly adopted by the board of directors / managing member(s) / general

\_\_\_\_\_, a \_\_\_\_\_ (the "Company"), do hereby certify as follows:

WHEREAS, the Company desires to enter into a Merchant Agreement (the "Merchant Agreement") with The Bancorp Bank a Delaware corporation ("Bank") and Phoenix Payment Systems, Inc. dba Electronic Payment Exchange, a Delaware corporation ("EPX"), a copy of which Merchant Agreement is attached hereto as Exhibit "A";
WHEREAS, pursuant to the terms of the Merchant Agreement, Bank and EPX will provide certain credit card financing and processing for VISA and/or MASTERCARD credit card purchases made by the Company's customers;
WHEREAS, pursuant to the terms of the Merchant Agreement, (a) the Company may be required to establish a Reserve Account (as defined in the Merchant Agreement) and (b) Bank may require the Company to direct certain funds relating to credit card purchases to such Reserve Account;
WHEREAS, pursuant to the terms of the Merchant Agreement, Bank may require the Company to execute instruments evidencing Bank's security interest in the Operating Account (as defined in the Merchant Agreement) and Reserve Account; and
WHEREAS, pursuant to the terms of the Merchant Agreement, the Company is required to comply with strict requirements concerning the processing of credit card transactions and the sale of the Company's products.
NOW, THEREFORE, BE IT RESOLVED, that the Merchant Agreement by and among the Company, Bank

and EPX, pursuant to which Bank and EPX shall act as the Company's exclusive provider of VISA and/or MASTERCARD credit card financing and processing services, is hereby approved and adopted in the form attached to these resolutions, together with such additions, changes or modifications as may be deemed

RESOLVED FURTHER, that in connection with the Merchant Agreement, the appropriate officer(s) of the Company is/are hereby authorized to establish (a) an Operating Account into which funds from credit card sales by the Company will be directed, and (b) if necessary, a Reserve Account into which funds from credit card sales by the Company may be directed by Bank in accordance with the provisions of the Merchant

necessary, advisable or appropriate by the officer(s) executing or causing the same to be completed; and

RESOLVED FURTHER, that the appropriate officer(s) of the Company is/are hereby authorized to enter into such additional agreements, and take such additional actions as may be reasonably required by Bank or EPX in connection with the Merchant Agreement; and

RESOLVED FURTHER, that the Secretary/managing member/general partner (circle one) of the Company is hereby authorized to deliver to Bank and EPX a Certificate (i) identifying the officers of the Company, (ii) verifying the signatures of such officers, and (iii) certifying a copy of these resolutions, and Bank and EPX are hereby authorized to rely upon such Certificate until formally advised by a like certificate of any changes therein, and is hereby authorized to rely on any such additional certificates.

2. Each person listed below (an "Officer") holds the office in the Company indicated opposite his or her name on the date hereof, (ii) the signature appearing opposite his or her name is the genuine signature of each such Officer, (iii) each such Officer, acting individually, is authorized to execute and deliver the Merchant

Name	Officer	Signature	
Name	Officer	Signature	
Name	Officer	Signature	
IN WITNESS WH	EREOF, I have executed this Cert	ificate this day of	, 200
Name			
Title			

Agreement and each of the agreements and documents contemplated by the Merchant Agreement (collectively, the "Transaction Documents") on behalf of the Company, and (iv) each such Officer, acting individually, is authorized to perform the Company's obligations under the Transaction Documents on behalf of the Company:

# PERSONAL GUARANTY

In this Agreement, the words "I," "me" or "mine" mean all who sign below as Guarantor(s); the words "you or your" mean The Bancorp Bank and Electronic Payment Exchange, and the word "Merchant" means Company Name.
By signing below, I unconditionally guarantee to you all obligations of Merchant identified above including all promises and covenants of Merchant, and all amounts due by Merchant, including interest, costs and other expenses, such as attorneys' fees and court costs, arising under a Merchant Agreement between Merchant and you dated, 200 and amendments thereto. This means that you can demand performance or payment from me if Merchant fails to perform any obligation or pay what Merchant owes under the Agreement. I agree that my liability under this guaranty will not be limited or cancelled because (1) the Agreement cannot be enforced against Merchant; (2) you agree to changes in the terms of the Agreement; (3) you release Merchant or any other guarantor of Merchant's Agreement; (4) a law, regulation, or order of any public authority affects your rights under the Agreement; and/or (5) anything else happens that may affect your rights against Merchant or any other guarantor.
I further agree that (a) you can delay enforcing any of your rights under this guaranty without losing them; (b) that you can demand payment from me without first seeking payment from Merchant or any other guarantor; and (c) that I will pay all court costs, attorneys' fees and collection costs incurred by you in connection with enforcement of the Agreement and this guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.
Agreed to and accepted on the date noted below.
Name
Witness
Witness

Initials \_\_\_\_\_ Page 20 of 21

#### **BANK DISCLOSURE PAGE**



**Member Bank Information** 

The Bancorp Bank 405 Silverside Road Suite 105 Wilmington, DE 19809 302-385-5000

### **Agent Information**

Phoenix Payment Systems, dba EPX 650 Naamans Road Suite 302 Claymont, DE 19703 302-246-3110

## **Important Bank Responsibilities**

- 1. The Bancorp Bank is the only entity approved to extend acceptance of VISA products directly to a Merchant.
- 2. The Bancorp Bank must be a principal (signor) to the Merchant Agreement.
- 3. The Bancorp Bank is responsible for educating Merchants on pertinent VISA Operating Regulations with which Merchants must comply.

**Merchant Information** 

- 4. The Bancorp Bank is responsible for and must provide settlement funds to the Merchant.
- 5. The Bancorp Bank is responsible for all funds held in reserve that are derived from settlement.

Merchant Name:	
Merchant Address:	
Merchant Phone:	
<u>Important</u>	Merchant Responsibilities
<ol> <li>Ensure compliance with cardholder data sect</li> <li>Maintain fraud and chargebacks below thres</li> <li>Review and understand the terms of the Mer</li> <li>Comply with VISA and MasterCard Operation</li> </ol> The responsibilities listed above do not supersed.	cholds.
*	ations of each party and that the VISA Member-The Bancorp
Merchant's Signature	, 200
Merchant's Printed Name & Title	



# eBilling Proposal for the City of Lodi

February 19, 2008

### **Proposal Provided By:**

J. D. McNaul Sales Manager, e-Correspondence Solutions InfoSend, Inc. 1041 S. Placentia Ave Fullerton, CA 92831-5105 (303) 706-9226 www.infosend.com jd.mcnaul@infosend.com

The information in this proposal is confidential and is not to be used or disclosed except to the recipient's employees, officers and agents engaged in evaluating this proposal. This proposal is valid for 45 days after the date of submittal.

# eBilling Service Description

**Set-up:** InfoSend creates a custom export routine to transfer your print billing data to

a hosted system that presents data in the HTML format. An online portal is created and integrated to your existing website that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), payment initiation and history screens. A custom payment file format is created which facilitates the daily transfer of payment information to your A/R staff for accounts receivable

reconciliation.

Portal Look: The portal will be customized to look like your website. A user database will

reside on InfoSend's servers, but customers will go to your website to login.

This process will be transparent to your customers.

Processing: Each data file will be processed for printing and online presentment.

Payments will be processed by one of InfoSend's payment partners.

**Bill Format:** Online bills can be formatted to look similar to paper invoices.

**Email Delivery:** Mimic paper mail delivery by emailing your customers their entire invoice in

full color. Login is only necessary to initiate a payment.

Customers whose email clients do not support HTML email will see a plain-

text email. A quick login will display the online bill.

Security: Industry-standard security methods are used to protect financial data.

Internet servers are separated onto different networks in a "three-tier"

architecture to safeguard data.

ACH: ACH payments are withdrawn from a customer's checking account and

typically cost much less to process than credit card payments. Payments

take less time to clear than paper checks.

**Credit Card:** You can also elect to give your customers the ability to pay via credit card.

CVV verification used.

# Benefits of Using InfoSend's e-Billing Service

You will be able to offer online invoicing to your customers, without having to hire additional information technology staff or purchase additional computer equipment. Only minimal operational tasks are required by your IT staff to offer online billing.

- You will give your customers access to an enterprise E-Billing system, without having to invest a large amount of capital into software licensing and installation fees.
- Customer service will be greatly improved. Customers will be able to pay invoices from work, minimize paper clutter, and initiate payments with ease. Additionally, customers will "self-service" their own accounts enrolling through your website, maintaining their own email address and delivery preferences thereby reducing the effort and load on your internal staff, and historic invoices will be available to them as are current outstanding invoices reducing customer service calls to your internal staff.
- Check processing costs will be lowered as it will not be necessary to process paper payments for those customers who utilize the online bill payment. Credit card payments, via an online system, are generally at a lower price point as well.
- You will have the ability to securely email invoices to your customers as well as posting them online via your website. This will offer new choices for customer service and billing, raising customer satisfaction since your customers will be able to choose their own method of interaction with City of Lodi.

# Schedule of e-Billing Service Charges

The following prices are contingent upon the use of one of InfoSend's online payment processors. Using other processors is possible but can incur additional fees as noted below. InfoSend can and will recommend a payment processor based on our research on behalf of the City to obtain the lowest quote from our partners.

InfoSend's Fees - Electro	onic Bill Presentment	
One Time Setup Fee	\$4,995.00	One time fee. Includes custom portal design that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), one City of Lodi invoice template design, one City of Lodi "new invoice available" email template design, payment initiation and on line payment history screens, testing, customer support training and documentation. Includes setting up payment integration to EPX for batch ACH payment processing and real time credit card processing. Set up to a non-InfoSend payment processor, see below.
Maintenance Fee	\$175.00/mth	Per month. Application monitoring, maintenance, upgrades as they are incorporated into system, and minor text edits to web pages or email templates. Also includes ability to upload new image files to add or change an advertising GIF on the online bill on a monthly basis. Includes use of an existing InfoSend payment processor.  Note: additional monthly maintenance fees as noted below can apply if you require that InfoSend use your current payment processor. Please submit their API documentation to allow our technical team to estimate the impact on your monthly maintenance fee.
Enrolled only package: Presentment and Storage Fee – 12 Months of Bill Retention for bills for enrolled customers only	\$400.00/mth Includes up to the first 2,000 enrolled bills/invoices per month for enrolled users only, \$0.11 per invoice over 2,000	Enrolled Users only loaded each month. Only enrolled user bills/invoices will be presented each month for enrolled users only, Customers will be able to view and pay their current bill during the next billing cycle after enrolling for the service. Historical invoices will be available to customer for 12 months; this will build over the initial 12 months of service. Includes basic email alerts – for example email notifying a customer when an invoice is available to be viewed (or the invoice itself can be put in this email) and payment receipt emails.
Off Line Payment History (included)	Included in monthly maintenance, normal \$1,200 set up is waived	The City may give InfoSend an ASCII or XML file (at an interval of its choosing- daily, weekly, etc.) of payments made at other sources other than on line (check, IVR, phone, etc.) and InfoSend will merge those payment records into the payment history section of the EBPP solution so enrolled customers have an on line record of all payments made (offline or online) since they enrolled in the system against their account. InfoSend will work with the City to understand and help design the file that the City will give InfoSend to update this information.
Optional: One Time custom Payment Processor Set-Up fee for customer opted payment processor (not one of the processors that InfoSend already has API's written	~\$750.00	This would include integrating to an existing payment processor that City of Lodi already works with and that InfoSend does not have an API to at this point in a batch payment environment. Actual set up would be determined after work scope in looking at processor connection requirements, but should be within 10% of figure to left.

to)		
<b>OPTIONS: Newsletters/Inser</b>	rts/etc.	
HTML Set-up & configuration	\$100.00 per page	Configure and set up an HTML version of an electronic newsletter, "insert" for inclusion or presentment via the integrated portal. This fee can be waived if a PDF can be provided of the newsletter/insert to InfoSend by the City.
Presentment of Newsletter or insert	\$0.05 per enrolled user	
Professional Services		
Programming Fee	\$130.00	Per hour. For customizations made to application over and above those items listed above and after go-live.

# Payment Processing Fees (ACH via EPX)

ACH Processing		
ACH Debits and Credits per transaction	\$0.25	Includes routing number validation.
Returned Items (per item)		Includes any return for NOC, NSF, payment stopped etc. either the first or second time.
Re-presentment of a Returned Item	\$0.50	Optional. ACH debits are only attempted once by default.
Base Monthly Account Charge	\$15.00	Includes access to a website to monitor ACH transactions.

Credit cards can also be accepted (any that the City wants to accept). Fees for credit cards are negotiated between the city and EPX, InfoSend suggests strongly that the City look at instigating the Utility Discount Rate available to it for Utilities accepting credit card payments.

# 362 Patent Indemnifications

InfoSend will include language in the final contract indemnifying the City of Lodi from action taken by Telus Corporation for perceived violations of the so called "362" Patent.

# Term of Contract

# 36 Months

The information in this proposal is confidential and is not to be used or disclosed except to the recipient's employees, officers and agents engaged in evaluating this proposal. This proposal is valid for 90 days after the date of submittal.



# Electronic Payment Exchange 650 Naamans Rd, Suite 302, Wilmington, DE 19703

# Public Company MERCHANT APPLICATION

Toll-Free: (800) 581.5109 Local: (302) 246-3110 Fax: (302) 246.3111 <u>www.epx.com</u>

DUCINECS INC	ODMATION												
BUSINESS INFORMATION Legal Name of Business (please attach Articles of Incorporation or Formation)					С	DBA (Doing Business As) Name (please attach Fictitious Name Certificate)							
						,							
Address					Α	Address							
City			State		Zip		City			State	Zip		
					•		,						
E-Mail			1		Website Addres	SS	Stock Symbol Federal Tax ID No				nber		
Business Phone	)		Fax Num	nber		С	Contact Na	ıme		Contact Phone			
BUSINESS DE	SCRIPTION												
Type of Owners	hip Sole	Proprietors	ship	☐ Partner	ship 🔲 LLo	С	☐ Corpo	ration	☐ Non-Profit Org	anization (please atta	ch 50	1-(c)(3))	
Describe Type of	of Business:								pt VISA/MasterCa 3 most recent mon		)		
										een terminated from a	accep	ting Bankcards	
Describe Specif	ic Goods/Service	s Sold:							y other Businesse attach explanation				
						N	Number of	Business L	ocations	Years In Business		yrsmths	
Are Good/Servi	ces Delivered at 1	Time of Sa	le?	☐ Yes	□ No	4	Average F	ercentage of	of Sales Returned:			%	
If no, Number o	f Days until Delive	ered: _	Day	/S		٨	Number of Days items may be Returned for Credit: Days						
TRANSACTION	TYPE Perce	ntage Cre	dit Card	%	Percentage A	ACH	% (PI	ease attach	most recent ACH	statement showing re	turn s	statistics)	
Card Swipe	Manually Keyed	Phone/ Orde		Internet	Total		Aver	age Ticket	High Ticket	Annual Volume	е	Annual Transactions #	
%	%		%	%	= 100%	,	\$		\$	\$			
	scription to Appea		nolder's S	Statement (f	Merchant name 2	23	Custo	mer Service	Telephone Numb	er to Appear on Card	holde	r's Statement:	
cnaracters in Le	ength, including sp	paces):											
REFERENCES									D.				
Trade Referenc	e				Contact				Phone	rione			
Trade Reference	e				Contact	Contact			Phone	Phone			
Bank Reference	•				Contact		Phone						
BANK INFORM	ATION – Please	submit vo	oided bus	siness che	ck from a bank	accoun	nt where t	unds are to	credited and fee	s are to be debited			
BANK INFORMATION – Please submit voided business check from a bank accordance Bank Name  Bank Address						i							
Bank Phone Number Checking Accoun					ount Nu	Number Routing/Transit Number							
PAYMENT CAR	RD INDUSTRY D	ATA SECU	JRITY ST	ANDARD (	(PCI Standard) -	- Please	e submit	Certificate	of Compliance ar	nd Self Assessment	Ques	tionnaire	
knowledge and	By signing below, the Merchant named above: (1) certifies that all information and documents submitted in connection with this Application are correct to the best of your knowledge and (2) authorizes EPX and/or its Partners to receive business credit reports and any other information regarding Applicant from third parties, to verify any information provided on the Application.												
By:(Office	er or Authorized Rep	presentative)	*	Title:					Date				

<sup>\*</sup>Please attach a copy of signing Officer or Authorized Representative's driver's license



# **INFOSEND EBPP Service Agreement**

This agreement made as of **March \_\_\_\_, 2008** by and between **INFOSEND, Inc.** having its main office at 1041 S. Placentia Avenue, Fullerton, California 92831-5105 and **the City of Lodi**, "Client" or "City" having its main office at: 221 W. Pine St, Lodi, CA 95241

# **Section 1. Term of Agreement**

The initial term of this agreement shall be a period of Thirty Six (36) months, commencing on the later of the dates executed below ("Initial Term"). This agreement shall continue for Subsequent Periods equal in duration to the Initial Term (Subject to Section 7) unless either party shall, at least 60 days prior to the end of the Initial Term or Subsequent Period, give written notice of termination, via certified mail.

# **Section 2. INFOSEND Service**

InfoSend will provide Electronic Bill Presentment and Payment services.

Website development includes the following services:

- Enrollment, Presentment, and Payment Website Page design & Hosting
- Creation of web pages for INFOSEND's Standard EBPP Offering
- Testing and proofing of the payment web pages and EBPP Site
- On-going monthly maintenance of the EBPP service

INFOSEND will provide Client with a web based application that provides integration to a payment processor (Client's credit card clearing service), Standard offering EBPP functionality including customer enrollment pages and database creation, bill presentment pages and hosting, payment initiation enablement for customers, historical billing and on line payment retention, giving the customer the ability to print a bill from on line, and a CSR interface. Off line payment history is also included, pending the City's ability to give InfoSend a workable file of transactions.

#### **Section 3. Confidentiality of Information**

All information and data relating to Client's business submitted by Client to INFOSEND under this agreement shall be treated as confidential by INFOSEND and shall not, unless otherwise required by law, be disclosed to any third party by INFOSEND without Client's written consent.

### Section 4. Limitation of Liability and Indemnification

INFOSEND will not be responsible for actions or omissions resulting from receiving data and/or following instructions received from Client. No damages shall be assessed against INFOSEND when any delay or breach on INFOSEND's part is caused by failure of Client to perform Clients' responsibilities or any other reason beyond the control of INFOSEND. INFOSEND is a service provider, as such, Client acknowledges that data processing involves the risk of human and machine errors and that INFOSEND shall not be liable for any errors, omissions, delays or losses. In no event shall INFOSEND be liable for indirect, special or inconsequential damages exceeding the total aggregate amount of transactional fees charged directly by INFOSEND relating to invoicing transactions as set for in the fee schedule at the end of this agreement that have been paid to INFOSEND before any action, even if INFOSEND has been advised of the possibility of such potential claim, loss or damage.

The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Notwithstanding anything to the contrary contained herein, INFOSEND shall not be responsible for delays in receipt of client information or processing client information because of causes beyond its reasonable control, including without limitation, failures or limitations on the availability of third party

Client Initial InfoSe	end Initial
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telecommunications or other transmission facilities and Clients' failure to properly enter and/or transmit. Client may terminate service with no notice if INFOSEND fails to provide services on an on-going basis or in the case of the service causing significant errors, delays or losses to Client.

# Section 5. Invoicing and Payment

INFOSEND will issue monthly invoices. Invoice terms are NET 10 days. 50% of the set-up fee is due upon completion of contract signing and the balance is due at go live date.

# Section 6. Cost of Services

The following prices are contingent upon the use of one of INFOSEND's online payment processors. Using other processors is possible but can incur additional fees as noted below. 50% of the set-up fee is due upon completion of contract signing and the balance is due at go live date.

	One time fee. Includes custom portal design that includes customer enrollment screens, bill viewer pages (one page for a consolidated
	invoice list and one page for detailed invoice viewing), one Lodi invoice template design, one Lodi "new invoice available" email template design, payment initiation and history screens, testing, customer support training and documentation. Includes setting up payment integration to one of INFOSEND's current payment processor partners for batch payment processing. Set up to a non-INFOSEND payment processor, see below.
\$175.00/mth	Per month. Application monitoring, maintenance, upgrades as they are incorporated into system, and minor text edits to web pages or email templates. Also includes ability to upload new image files to add or change an advertising GIF on the online bill on a monthly basis. Includes use of an existing InfoSend payment processor.  Note: This assumes that the City will be using EPX as the chosen payment processor. If another processor is chosen that InfoSend does NOT have a written API working currently, an additional charge of \$750.00 set up will be charged to develop the integration.
\$400.00/mth Includes up to the first 2,000 enrolled bills/invoices per month for enrolled users only, \$0.11 per	Enrolled Users only loaded each month. Only enrolled user bills/invoices will be presented each month for enrolled users only, Customers will be able to view and pay their current bill during the next billing cycle after enrolling for the service. Historical invoices will be available to customer for 12 months; this will build over the initial 12 months of service. Includes basic email alerts – for example email notifying a customer when an invoice is available to be viewed (or the invoice itself can be put in this email) and payment receipt emails.
\$ b	\$175.00/mth \$400.00/mth Includes up to the first 2,000 enrolled oills/invoices er month for enrolled users only,

	2,000	
Off Line Payment History (included)	Included in monthly maintenance, normal \$1,200 set up is waived	The City may give InfoSend an ASCII or XML file (at an interval of its choosing- daily, weekly, etc.) of payments made at other sources other than on line (check, IVR, phone, etc.) and InfoSend will merge those payment records into the payment history section of the EBPP solution so enrolled customers have an on line record of all payments made (offline or online) since they enrolled in the system against their account. InfoSend will work with the City to understand and help design the file that the City will give InfoSend to update this information.
Optional: One Time Payment Processor Set- Up fee for customer opted payment processor	\$750.00	If another processor is chosen that InfoSend does NOT have a written API working currently, an additional charge of \$750.00 set up will be charged to develop the integration.

Newsletters/Inserts/etc.		
Optional: HTML Set-up & configuration	\$100.00 per page	Configure and set up an HTML version of an electronic newsletter, "insert" for inclusion or presentment via the integrated portal. This is if the City can't or won't give us the insert as a low size PDF file already and InfoSend need to do the work.
Optional: Presentment of Newsletter or insert via email to enrolled users	\$0.03 per enrolled user	This enables an enrolled customer to view a stored attachment or newsletter or other marketing piece as an attachment to a sent email.
Professional Services		
Programming Fee	\$130.00	Per hour. For customizations made to application over and above those items listed above and after go-live.

# Payment Processing Fees

These fees will be priced separately from the presentment and alert fees above and are dependent upon separate contracts with EPX as the payment processor.

# **Section 7. Agreement Prices**

The EBPP unit prices quoted shall remain firm for the initial three (3) year term of the agreement. After the initial term the cost of this service can increase. The maximum cost increase will be no more than 13% of the previous pricing in effect if there is any increase at all. The Client will be notified, in writing, at least 30 days prior to the new contract term if such price increase is implemented.

# Section 8. Programming

Once the initial service implementation is complete, the client can request additional programming. Occasional programming requests that require less than one hour of work are not assessed a programming fee, they are included in the monthly maintenance. Programming fees will apply should the programming requests become frequent or require more than one hour of programming per request. INFOSEND will provide an estimated programming timeframe and cost for these types of programming requests. Examples include but are not limited to: modifications to existing program(s), the addition of a new program or programs, and any software conversions resulting in a new client data format or change to the existing client data format. Upon receipt of the client's written approval, INFOSEND will provide a written scope of work for approval before proceeding with the work requested. The client will be invoiced at the current hourly programming fee. INFOSEND's current programming fee is \$130.00 per hour.

# Section 9. "362" Patent

InfoSend agrees to providing indemnification to the City of Lodi from action taken by Telus Corporation for perceived violations of the so called "362" Patent.

### Section 10. Miscellaneous

CITY OF LODI

The substantive laws of the state of California shall govern this agreement. It constitutes the entire agreement between the parties with respect to the subject matter hereof. No representations and agreements modifying or supplementing the terms of this agreement will be valid unless in writing, signed by persons authorized to sign agreements on behalf of both parties. This agreement is not intended to, and shall not be construed to, create or confer any right in or upon any person or entity not a party to it.

INFOSEND, Inc.

Name: Title: Signature: Date:	Name: Title: Signature: Date:	

Client Initial InfoSend Initial

AGENDA TITLE: Accept Memorial Bench, Tree, and Plaque Donation from Friends of

Jeannie Matsumoto in Honor of Suzanne Matsumoto

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Accept a memorial bench, tree, and plaque donation from the

friends of Jeannie Matsumoto in honor of her daughter,

Suzanne Matsumoto.

**BACKGROUND INFORMATION**: Friends and coworkers of retired Public Works Department

employee Jeannie Matsumoto wish to donate a memorial bench, tree, and plaque at the Civic Center grounds adjacent to City Hall, in

honor of Suzanne Matsumoto.

City staff has reviewed the project location, costs and policy protocol. The memorial project and location are consistent with the Parks and Recreation Department's memorial policy and existing master plans.

FISCAL IMPACT: The friends of Jeannie Matsumoto have agreed to cover purchase and

installation costs. Maintenance costs will be negligible.

FUNDING AVAILABLE: Not applicable.

Richard C. Prima, Jr.
Public Works Director

RCP/PJF/pmf

cc: Dennis J. Callahan, Fleet and Facilities Manager Curt Juran, Assistant Streets and Drainage Manager Paula Fernandez, Senior Traffic Engineer Pam Farris, Administrative Secretary

APPROVED:

# Comments by the public on non-agenda items

# THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO <u>FIVE</u> MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items

**AGENDA TITLE:** Conduct a Public Hearing to consider and approve community input and proposals

for uses of the City's 2008/09 Federal allocation of Community Development Block Grant (CDBG) and HOME Program Funds and the reallocation of available funds

from previous program years.

**MEETING DATE:** March 5, 2008

PREPARED BY: Community Development Department

**RECOMMENDED ACTION**: Conduct a public hearing to consider and approve community input

and proposals for potential uses of the City's 2008/09 Federal allocation of CDBG and HOME Program funds and the reallocation

of available funds from previous program years.

**BACKGROUND INFORMATION**: Annually, the City receives an allocation of CDBG and HOME funds

through San Joaquin County, which receives an allocation from the

US Department of Housing and Urban Development.

CDBG funds can be used for a wide range of community development projects as long as they meet a national objective. The national objectives are 1) to address the needs of low- to moderate-income persons, 2) to eliminate slum or blighted conditions, and 3) to resolve an urgent need. HOME funds are reserved for housing and housing-related activities, such as rehabilitation and new construction. Activities undertaken with HOME funds also must meet the needs of low- to moderate-income persons.

### **Funding Allocations**

The City will receive \$692,597 in CDBG funds and \$253,041 in HOME funds from the Federal government for the coming fiscal year. This represents an approximately 3.5 percent reduction in both CDBG and HOME funds as compared to 2007/08 allocations.

To supplement the 2008/09 CDBG allocation from HUD, an additional \$86,504 in CDBG funds is available for reallocation from the following projects or services from previous years:

•	03-05	City of Lodi Transit Passes	\$14,147.44
•	03-06	LUSD ADA Playgrounds	\$19,730.22
•	05-03	Lodi Cat Connection	\$ 3,606.78
•	05-05	Parks - Local Park Playground Rehab	\$ 2,201.24
•	06-03	Lodi Cat Connection	\$ 5,000.00
•	06-05	Parks - Enze Pool Deck Resurfacing	\$25,037.95
•	06-08	Lodi Library Adult Literacy	\$ 304.41
•	06-13	Stockton Emergency Food Bank	\$ 6,476.62
•	07-07	Boys and Girls Club Improvements	\$10,000.00
			\$86,504.66

APPROVED:		
	Blair King, City Manager	

Additionally, there is \$89,875 in HOME funds eligible for reallocation, due to the fact that the San Joaquin Housing Authority project received another source of funding.

The total HOME funding available for 2008/09 is \$342,916. The total CDBG funding available is \$779,101.

# **Funding and Application Process**

The process for allocating the 2008/09 CDBG/HOME funding has followed the following timeline:

December 4, 2007
 Public meeting held to open application period
 Council meeting on funding breakdown

• January 16, 2008 Application deadline

Jan. 17 - Feb. 22, 2008
 Staff review of applications

February 20, 2008 Council meeting on ranking criteria for applications

• February 22, 2008 Review applications and recommendations with City Manager

March 5, 2008 Conduct public hearing

March 6, 2008
 Submit Council authorized funding recommendations to County

During the application period that ran from December 4 to January 16, the City received 11 applications for CDBG funds from community-based organizations, for a total request of \$830,566. No applications were received for activities eligible for HOME funds.

Our review of the applications centered on the new rating criteria, which was presented to the Council at the February 12 shirtsleeve session and February 20 Council meeting. The rating criteria focus on the following areas:

- Activity Need and Justification. Activities were evaluated on their ability to address a significant community need and their benefit to very low-income persons.
- Readiness to Proceed. Programs and projects were evaluated based on their feasibility of implementation, overall and within the allotted time frame.
- Cost Reasonableness and Effectiveness. Budgets were reviewed to determine completeness and reasonableness of all costs related to the request for CDBG funding. Organizations applying for service funding were also evaluated on their ability to become self-sustaining.
- Activity Management and Implementation. Applicants were evaluated on experience, administrative capacity, and financial management.
- Past Performance. Applicants previously receiving CDBG funds from the City will be evaluated on their reporting and timely expenditure of funds.
- *Matching Contributions*. Consideration was given to the amount of non-CDBG/HOME funds committed to the project.

#### CDBG Funding Recommendations

For planning and administrative activities, an allocation of \$96,963 (14 percent of the CDBG 2008/09 allocation) is recommended to cover the costs of managing the CDBG and HOME Programs.

Remaining funding recommendations are grouped into the following categories: City projects, community-based organization (CBO) projects, and CBO service programs. Funding recommendations for these three categories are listed below, with additional detail on applicants and recommendations in Exhibit A (Summary of 2008/09 Applications Received) and Exhibit B (City CDBG Projects – Three-Year Projection).

# **CITY PROJECTS (\$409,283)**

- Blakely Park North Pool Deck Resurfacing (\$98,000)
- Demolition of 17 East Elm Street (\$95,000)
- Lodi Library ADA Entrance Improvements (\$86,558)
- Graffiti Abatement (\$79,725)
- Economic Development Revolving Loan Fund (\$50,000)

# CBO SERVICE PROGRAMS (\$32,622)

- San Joaquin Fair Housing Fair Housing Services (\$22,622)
- Second Harvest Food Bank Food Assistance Programs (\$10,000)

### CBO CAPITAL PROJECTS (\$240,233)

- Community-Based Organization Mid-Year Grants (\$147,173)
- Salvation Army Walk-In Cooler/Freezer Replacement (\$45,000)
- Salvation Army Hope Avenue Apartments ADA Improvements (\$41,000)
- Emergency Food Bank Facility Expansion (\$7,060)

Because two of the largest CBO applications for capital funds are not ready to proceed, there were not an adequate number of activities to meet the 40 percent allocation to CBO projects approved by the Council on December 19. Staff's recommendation is to create the Community-Based Organization Mid-Year Grants activity, which will allow the City to solicit additional applicants and/or help current applicants rework their projects. As an alternative, the Council could allocate the \$147,173 to City projects.

#### **HOME Funding Recommendations**

As no eligible requests for the HOME funds were received, all of the HOME funds (\$342,916) will be allocated to our existing Housing Assistance Program, which provides down-payment assistance loans to low- and moderate-income persons throughout the City.

FISCAL IMPACT:	CDBG are federal funds. Capital improvements allow for maintenance costs to be reduced. Administration costs are paid via a 14% set-aside of the grant funds.		
FUNDING AVAILABLE:	2008/09 Community Development Block Grant		
	Kirk Evans, Budget Manager		
	Randy Hatch Community Development Director		

Attachments

cc: City Attorney's Office SJC Community Development

# 2008/09 CDBG Applications Received and Funding Recommendations Community-Based Organization Service Programs

Project - Organization	Project Description	Ranking	Fund Request	Rec. Funding	Recommendations
Fair Housing Services San Joaquin Fair Housing	Provide required fair housing services, including telephone hotline for tenants and landlords and investigation of complaints.	Required	\$22,622	\$22,622	Fund at \$22,622 because this is the City's proportionate share of fair housing expenses.
Food Distribution Programs Second Harvest Food Bank	Provide support for the administration of the Food Assistance, Senior Brown Bag, and Food 4 Thought Programs.	95	\$10,000	\$10,000	Fund at \$10,000 because they are expanding their programs and leverage significant funds and food donations.
Adult Day Care Senior Service Agency of SJC	Provide staffing support and supplies to the Adult Day Health Care programs, which serve adults with mental and/or physical disabilities.	83	\$893	\$0	Not recommended because the administrative cost would exceed the grant amount, and the program plans to serve only 3 Lodi residents.
Senior Nutrition Services Senior Service Agency of SJC	Provide nutritious home-delivered meals, or meals at a congregate site, to Lodi seniors five days per week.	82	\$16,125	\$0	Not recommended because CDBG funding will not result in a program expansion, and would require funding commitments from other jurisdictions.
Nutrition on the Move Emergency Food Bank of Greater Stockton	Provide an educational nutrition program to encourage healthy eating and an active lifestyle for lower-income households.	74	\$4,500	\$0	Not recommended because the program depends on regional funding, but is not being recommended for funding by SJC or Stockton.
Foster Child Counseling VBR Foundation	Provide a counseling program for children recently placed in foster care, including indiviudal and group counseling.	48	\$10,000	\$0	Not recommended because of concerns about agency's administrative capacity, ability to expend funds in a timely manner, and lack of leveraged funds.

# City CDBG Projects: Three-Year Projection

Drainata	Donartment Required		2008/09	2009/10	2010/11
Projects	Department	Funding	Actual \$409,283	Estimated \$360,000	Estimated \$360,000
ADA Curb Ramps	Public Works	\$250,000	-	-	-
Alley Drainage Improvements	Public Works	\$225,000	-	\$225,000	-
Demolition of 17 E. Elm Street	Public Works	\$95,000	\$95,000	-	-
Graffiti Abatement	Public Works	\$239,175	\$79,725	\$79,725	\$79,725
Blakely Park - North Pool Deck Resurfacing	Parks & Recreation	\$98,000	\$98,000	-	-
Blakely Park - Pool Restroom ADA	Parks & Recreation	\$200,000	-	-	-
Blakely Park Playground Surface Replacement	Parks & Recreation	\$85,000	-	-	-
Van Buskirk Playground Replacement	Parks & Recreation	\$165,000	-	-	\$165,000
Lodi Lake North Playground Replacement	Parks & Recreation	\$280,000	-	-	-
Grape Bowl Accessibility Improvements	Parks & Recreation	\$150,000	-	-	\$115,275
Library ADA Improvements	Library	\$250,000	\$86,558	-	-
Economic Development - Revolving Loan Fund	City Manager	\$100,000	\$50,000	\$55,275	-

## **EXHIBIT B**

#### RESOLUTION NO. 2008-

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE PROJECTED USE OF FUNDS FOR THE 2008-09 FEDERAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS, AND FURTHER REALLOCATING AVAILABLE FUNDS FROM PREVIOUS PROGRAM YEARS

\_\_\_\_\_

WHEREAS, the Department of Housing and Urban Development has determined that the City of Lodi, California, is entitled to Community Development Block Grant (CDBG) and HOME funding as a participating city through the County of San Joaquin and Urban County for fiscal year 2008-09 Federal allocation; and

WHEREAS, the City Council of the City of Lodi has been made aware of the amount of the CDBG and HOME funds available for the 2008-09 Federal allocation of fiscal program year being approximately \$692,597 and \$253,041, respectively; and

WHEREAS, the City of Lodi has held, with proper notification, a public hearing at the City Council meeting of March 5, 2008, to receive comments and proposals from the public regarding the projected use of CDBG and HOME funds and provided the public with adequate information concerning the amount of funds available for community development activities, the range of eligible activities, and other important requirements; and

WHEREAS, the City of Lodi, California, has received public input regarding the proposed use of CDBG and HOME funds; and

WHEREAS, the City Council of the City of Lodi has been made aware of the need to reallocate unused CDBG and HOME funds from previous years to facilitate the expedited use of those funds; and

WHEREAS, staff therefore recommends the reallocation of \$86,504 of unused available CDBG and \$89,875 in HOME funds from previous program years to supplement the 2008-09 funding and reduce the balance of unused funds, as shown as follows:

#### Sources of Reallocated CDBG Funds

Project 03-05	City of Lodi Transit Passes	\$14,147.44
Project 03-06	LUSD ADA Playgrounds	\$19,730.22
Project 05-03	Lodi Cat Connection	\$ 3,606.78
Project 05-05	Parks – Local Park Playground Rehab.	\$ 2,201.24
Project 06-03	Lodi Cat Connection	\$ 5,000.00
Project 06-05	Parks – Enze Pool Deck Resurfacing	\$25,037.95
Project 06-08	Lodi Library Adult Literacy	\$ 304.41
Project 06-13	Stockton Emergency Food Bank	\$ 6,476.62
Project 07-07	Boys and Girls Club Improvements	\$10,000.00
•	,	\$86,504,66

#### **Sources of Reallocated HOME Funds**

SJC Housing Authority	\$89,875.00
	\$89,875.00

WHEREAS, staff therefore recommends the allocation of 2008-09 CDBG and HOME funds to projects as outlined below.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby approve the recommended 2008-09 Federal allocations of CDBG funds to the projects recommended by staff in the amount of \$779,101, as shown as follows:

# 2008-09 CDBG Program Funding (including reallocated funds) – \$779,101 Program Administration – (\$96,963)

<u>F1'</u>	ogram Administration – (\$30,303)	
•	Program Administration	\$ 96,963.00
Cit	ty Projects – (\$409,283)	
•	Blakely Park – North Pool Deck Resurfacing	\$ 98,000.00
•	Demolition of 17 East Elm Street	\$ 95,000.00
•	Lodi Library – ADA Entrance Improvements	\$ 86,558.00
•	Graffiti Abatement	\$ 79,725.00
•	Economic Development Revolving Loan Fund	\$ 50,000.00
•	Economic Development Nevolving Loan Fund	φ 50,000.00
Co	ommunity Based Organization Service Programs – (\$32,622)	
•	San Joaquin Fair Housing – Fair Housing Services	\$ 22,622.00
•	Second Harvest Food Bank – Food Assistance Programs	\$ 10,000.00
Co	ommunity Based Organization Capital Projects – (\$240,233)	
•	Community Based Organization Mid-Year Grants	\$147,173.00
•	Salvation Army – Walk-In Cooler/Freezer Replacement	\$ 45,000.00
•	Salvation Army – Hope Avenue Apartments ADA Improvements	\$ 41,000.00
•	Emergency Food Bank – Facility Expansion	\$ 7,060.00
	Total Distribution of 2008-09 CDBG Allocation	\$779,101.00

BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby approve the recommended 2008-09 Federal allocations of HOME funds to the projects recommended by staff in the amount of \$342,916, as shown as follows:

# 2008-09 HOME Program Funding (including reallocated funds) – \$342,916 Housing Assistance Program – (342,916.00)

<ul><li>Dowr</li></ul>	Payment Assistance Program	<u>\$342,916.00</u>
	<b>Total Distribution of 2008-09 HOME Allocation</b>	\$342,916.00
Dated:	March 5, 2008	=========
	nereby certify that Resolution No. 2008 was passed ncil of the City of Lodi in a regular meeting held March 5, 20	

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

vote:

RANDI JOHL City Clerk

2008-



# Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI P. O. BOX 3006 LODI, CALIFORNIA 95241-1910

## **ADVERTISING INSTRUCTIONS**

SUBJECT:

PUBLIC HEARING TO CONSIDER AND APPROVE COMMUNITY INPUT AND PROPOSALS FOR USES OF THE CITY'S 2008-09 FEDERAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS AND THE REALLOCATION OF AVAILABLE

**FUNDS FROM PREVIOUS PROGRAM YEARS** 

**PUBLISH DATE:** 

SATURDAY, FEBRUARY 23, 2008

# **LEGAL AD**

TEAR SHEETS WANTED:

One (1) please

SEND AFFIDAVIT AND BILL TO:

RANDI JOHL, CITY CLERK

City of Lodi P.O. Box 3006

Lodi, CA 95241-1910

DATED:

THURSDAY, FEBRUARY 21, 2008

ORDERED BY:

RANDI JOHL CITY CLERK

JENNIFER M. PERRIN, CMC

DEPUTY CITY CLERK

ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper - Copy to File

Faxed to the Sentinel at 369-1084 at 2:35 pm(time) on 2 2 | DV (date) 2 (pages)

LNS Phoned to confirm receipt of all pages at \_\_\_\_\_(time) \_\_\_\_\_\_ CM \_\_\_JMP (initials)



### **DECLARATION OF POSTING**

PUBLIC HEARING TO CONSIDER AND APPROVE COMMUNITY INPUT AND PROPOSALS FOR USES OF THE CITY'S 2008-09 FEDERAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS AND THE REALLOCATION OF AVAILABLE FUNDS FROM PREVIOUS PROGRAM YEARS

On Friday, February 22, 2008, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider and approve community input and proposals for uses of the City's 2008-09 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library Lodi City Clerk's Office Lodi City Hall Lobby Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2008, at Lodi, California.

ORDERED BY:

RANDI JOHL CITY CLERK

JENNIFER M. PERRIN, CMC

ADMINISTRATIVE CLERK



## **DECLARATION OF MAILING**

# PUBLIC HEARING TO CONSIDER AND APPROVE COMMUNITY INPUT AND PROPOSALS FOR USES OF THE CITY'S 2008-09 FEDERAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS AND THE REALLOCATION OF AVAILABLE FUNDS FROM PREVIOUS PROGRAM YEARS

On Friday, February 22, 2008, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider and approve community input and proposals for uses of the City's 2008-09 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years, attached hereto marked Exhibit A. The mailing list for said matter is attached hereto marked Exhibit B.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2008, at Lodi, California.

ORDERED BY:

RANDI JOHL CITY CLERK, CITY OF LODI

JEWNIFER M. PERRIN, CMC

DEPUTY CITY CLERK ADMINISTRATIVE CLERK



NOTICE OF PUBLIC HEARING

Date: March 5, 2008

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl City Clerk Telephone: (209) 333-6702 **EXHIBIT** A

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that on **Wednesday, March 5, 2008**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) Consider and approve community input and proposals for uses of the City's 2008-09 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years.

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 W. Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at, or prior to, the public hearing.

By Order of the Lodi City Council:

Randi Johl City Clerk

Dated: February 20, 2008

Approved as to form:

D. Stephen Schwabauer City Attorney

### **EXHIBIT B**

PUBLIC HEARING TO CONSIDER AND APPROVE COMMUNITY INPUT AND PROPOSALS FOR USES OF THE CITY'S 2008-09 FEDERAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS AND THE REALLOCATION OF AVAILABLE FUNDS FROM PREVIOUS PROGRAM YEARS

#### **Mailing List**

Robina Ashgar, Executive Director Community Partnership for Families of San Joaquin County P.O. Box 1569 Stockton, CA 95201

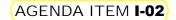
Tim Viall, Executive Director Emergency Food Bank 7 W. Scotts Avenue Stockton, CA 95203

Ted Van Alen, Business Administrator The Salvation Army, Lodi Corps P.O. Box 1388 Lodi, CA 95241

Wendy Moore, Deputy Director San Joaquin County Human Services Agency P.O. Box 201056 Stockton, CA 95201-3066

Paul Rengh, Executive Director Second Harvest Food Bank 704 E. Industrial Park Drive Manteca, CA 95337

Jonathan Quinn, Development Administrator Senior Service Agency of San Joaquin County 224 S. Sutter Street Stockton, CA 95203





AGENDA TITLE: Public Hearing to Consider Resolution Adopting Federal Fiscal Year 2008

**Program of Transit Projects** 

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Hold a public hearing to consider a resolution adopting the Transit

Division's Federal Fiscal Year 2008 Program of Transit Projects.

**BACKGROUND INFORMATION**: The City of Lodi is required to hold a public hearing to allow the

public an opportunity to comment on the City's transit projects funded by the Federal Transit Administration (FTA). In the past, very few, if any, comments have been given regarding the use of

federal funds for transit projects. Staff expects the same this year. The program of projects was published in the *Lodi News Sentinel*. For FFY 2008, the program of projects for the City of Lodi is as follows:

#### FFY 2008 Section 5307 Funds:

Operations for City of Lodi for 2007/08 \$1,037,249.00 Facility Upgrades \$160,000.00

Total \$1,197,249.00

The category of Facility Upgrades allows for the Transit Division to budget a lump sum amount to use throughout the year on a variety of maintenance and security related upgrades to the Lodi Station, Lodi Station Parking Structure and the maintenance facility at the Municipal Service Center. Examples of items which can be funded include small parts and tools, lifts, repair to the actual facilities, and security enhancements at Lodi Station.

FISCAL IMPACT: This will allow the City of Lodi to claim and receive FTA funding for the

Federal Fiscal Year 2008. These funds will pay for on-going operations, as

well as needed capital improvements.

**FUNDING AVAILABLE**: None required.

Richard C. Prima, Jr.
Public Works Director

Prepared by Tiffani M. Fink, Transportation Manager RCP/TMF/pmf

cc: Budget Manager Transportation Manager

APPROVED:		

Blair King, City Manager

K:\WP\TRANSIT\CPH 08 POP.doc 2/28/2008

#### RESOLUTION NO. 2008-\_\_\_\_

#### A RESOLUTION OF THE LODI CITY COUNCIL ADOPTING THE FEDERAL FISCAL YEAR 2008 PROGRAM OF TRANSIT PROJECTS

\_\_\_\_\_\_

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby adopt the Federal Fiscal Year 2008 Program of Transit Projects as follows:

#### FFY 2008 Section 5307 Funds:

Operations for City of Lodi for 2007/08 \$1,037,249.00 Facility Upgrades \$ 160,000.00

Total \$1,197,249.00

Dated: March 5, 2008

\_\_\_\_\_

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk



# Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI P. O. BOX 3006 LODI, CALIFORNIA 95241-1910

## ADVERTISING INSTRUCTIONS

SUBJECT:

PUBLIC HEARING TO ADOPT FEDERAL FISCAL YEAR 2008

**PROGRAM OF TRANSIT PROJECTS** 

**PUBLISH DATE:** 

SATURDAY, FEBRUARY 23, 2008

# **LEGAL AD**

TEAR SHEETS WANTED:

One (1) please

SEND AFFIDAVIT AND BILL TO:

RANDI JOHL, CITY CLERK

City of Lodi P.O. Box 3006

Lodi, CA 95241-1910

DATED:

THURSDAY, FEBRUARY 21, 2008

ORDERED BY:

RANDI JOHL CITY CLERK

JENNIFER W. PERRIN, CMC

DEPUTY CITY CLERK

CYNTHIA MURPHY ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper - Copy to File



## **DECLARATION OF POSTING**

# PUBLIC HEARING TO ADOPT FEDERAL FISCAL YEAR 2008 PROGRAM OF TRANSIT PROJECTS

On Friday, February 22, 2008, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to adopt Federal Fiscal Year 2008 Program of Transit Projects (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library Lodi City Clerk's Office Lodi City Hall Lobby Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

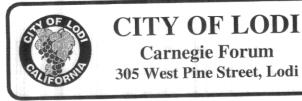
Executed on February 22, 2008, at Lodi, California.

ORDERED BY:

RANDI JOHL CITY CLERK

JENNIFER M. PERRIN, CMC DEPUTY CITY CLERK

ADMINISTRATIVE CLERK



# NOTICE OF PUBLIC HEARING

Date: March 5, 2008

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl, City Clerk

Telephone: (209) 333-6702

**EXHIBIT A** 

### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Wednesday, March 5, 2008, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) Adopt Federal Fiscal Year 2008 Program of Transit Projects.

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl City Clerk

Dated: February 20, 2008

Approved as to form:

D. Stephen Schwabauer City Attorney



**AGENDA TITLE:** Appointments to the Lodi Arts Commission

**MEETING DATE:** March 5, 2008

PREPARED BY: City Clerk

**RECOMMENDED ACTION**: Concur with the Mayor's recommended appointments to the Lodi

Arts Commission.

**BACKGROUND INFORMATION:** On several occasions, the City Clerk's Office was directed to post

and re-post for the four vacancies on the Lodi Arts Commission.

The Mayor has reviewed the two applications and made her

selection. It should be noted that the two remaining vacancies on the Commission will continue to stay open until filled, as previously directed by Council. It is, therefore, recommended that the City Council concur with the following appointments.

#### **Lodi Arts Commission**

Thorstien W. Himle II Term to expire July 1, 2011
Karen Mattei Term to expire July 1, 2011

NOTE: Two applicants (one new application and one on file); posted 2/21/07; 6/6/07, 6/20/07; 8/15/07, 11/7/07 & 1/16/08 application deadline 2/19/08

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

APPROVED:

Blair King, City Manager



**AGENDA TITLE:** Presentation of a proposed Art in Public Places art piece on the northwest corner

of Lodi Avenue and Washington Street by artist Jerrod Mays

**MEETING DATE:** March 5, 2008

PREPARED BY: Community Development Department

**RECOMMENDED ACTION**: Receive presentation of a proposed Art in Public Places art piece on

the northwest corner of Lodi Avenue and Washington Street by

artist Jerrod Mays.

**BACKGROUND INFORMATION**: In May 2004, the California Department of Transportation provided

the City of Lodi a grant to fund the Eastside Mobility and Access Plan (EMAP). The purpose of the EMAP project was to identify improvements to Lodi's Eastside, specifically focused on pedestrian

and bicycle safety and connectivity, transit service and amenities, vehicular circulation and parking, streetscape elements and community identity. The EMAP project team identified sections of streets in the Eastside area that represent heavily traveled corridors for the local residents of the community. Included in the plan was the construction of a node or a pedestrian oriented point of interest on the northwest corner of Lodi Avenue and Washington Street (Smart and Final site). Upon review of the EMAP Guidelines and the proposal for the Smart and Final site, the Art Advisory Board identified said site as an opportunity for the placement of an art piece. They worked closely with Planning and Public Works staff to identify artists that could meet both goals of creating a pedestrian node and public art.

City staff prepared a request for proposal for artists to incorporate artwork into the Smart and Final site. Staff requested that the art piece be consistent with the EMAP Design Guidelines and reflect the history of the location and the unique cultural identity of the area. Staff received and presented five proposals to the Selection Committee on October 24, 2007. The Selection Committee consisted of members from the Lodi Arts Commission, Planning Commission, Parks Commission, Public Works Department, Community Development Department and a citizen member at large.

The Selection Committee reviewed the proposals and awarded Jerrod Mays' art piece "Better Days" with the highest score. Mr. Mays is proposing to install a canopy shade structure built with a copper roof, powder coated metal tubing, seating, trash enclosure complete with chrome grapes and leaves for accent. Mr. Mays will provide samples of the materials he will use to construct the art piece during his presentation. Project completion is tentatively scheduled for December 2008. As required, the artist also attended the Lodi Avenue Improvement project public workshops on September 25, 2007 and January 31, 2008 to present his art piece and receive feedback and comments from the public. Design guidelines for the Lodi Avenue Improvement project is tentatively scheduled for the April 2, 2008 City Council meeting for approval. Lodi Avenue construction is anticipated to begin in the summer of 2009.

ADDDOVED.		
APPROVED:		_
	Blair King, City Manager	

FUNDING AVAILABLE:

The suggested budget for the art piece is \$100,000. Artist proposal of \$80,000 includes the design, transportation and installation of the art work. Funding will be provided by the Art in Public Places account.

Peter Pirnejad Planning Manager

rc/pp



**AGENDA TITLE:** Receive Progress Report on the City of Lodi General Plan Update

**MEETING DATE:** March 5, 2008

PREPARED BY: Rad Bartlam, General Plan Project Manager

**RECOMMENDED ACTION**: Receive progress report on the City of Lodi General Plan update.

BACKGROUND INFORMATION: Early in 2006, the City Council directed the Community

Development Department to begin the process for updating the City of Lodi General Plan. On May 17, 2006, the City Council entered into a contract with the consulting firm of Dyett & Bhatia for services

to update the General Plan.

On September 19, 2007, the City Council authorized the City Manager to execute a contract with myself in order to manage the program. The background information including all working papers has been completed. Additionally, the City Council and Planning Commission held a joint session in December to receive and comment on the information.

Since the joint session, the consultant team and City staff have met to draft the alternatives of the General Plan. Those alternatives are being fine tuned with a goal of being finalled by mid March. Additionally, the fiscal model, which is being developed by Mundie Associates, is nearly complete. Once the alternatives have been vetted against the various models, the alternatives will be presented to the public and the formal comment period will begin. None of the General Plan alternatives will be a "recommended" alternative, but will present various alternatives with the intention of providing a new community preferred alternative.

#### SCHEDULE

The schedule represents the assumptions for completion of the various tasks for the General Plan. The Sketch Plans (Alternatives) will be completed by mid March. The alternatives will be vetted and reviewed by the public through the month of May. The Draft General Plan policy document and Environmental Impact Report being complete by December. The public review process and adoption schedule would commence after the first of the year, 2009 and the projected Final for City Council action in spring, 2009.

#### BUDGET

The overall program remains slightly over budget. We have made progress in tightening the gap. I remain confident that we will be able to keep this within ten percent of the original amount from this point forward.

APPROVED:		_
	Blair King, City Manager	-

Receive Progress Report on the City of Lodi General Plan Update March 5, 2008 Page Two

FISCAL IMPACT:	None.
FUNDING AVAILABLE:	The cost of the above work is included in the contract for the General Plan Update authorized by the City Council.
	Rad Bartlam General Plan Project Manager

RB/jmp



AGENDA TITLE: Adopt Revised Fleet Policy

MEETING DATE: March 5, 2008

PREPARED BY: Public Works Director

**RECOMMENDED ACTION**: Adopt the attached revised Fleet Policy.

**BACKGROUND INFORMATION**: The City's current Fleet Policy was developed in 1998 and covers a

multitude of policy and administrative procedures. One significant deficiency in the policy and its implementation is the lack of an adequate mechanism for funding vehicle replacements. As part of

the overall City's goal to have financial stability with appropriate reserves, staff has proposed previously that the cost of vehicles, both maintenance and replacement, be reflected in the operating budgets of each Department. While the Council has been supportive of this general approach, questions have been raised about the Fleet Policy and, in particular, the perception that the minimum replacement guidelines in the policy become a defacto standard for replacement.

A new Fleet Policy (Exhibit A) has been drafted to address Council's concerns regarding replacement and greatly simplify the policy by removing various administrative details. The proposed policy has three sections:

- Objectives the first two are edited versions of the existing policy and the third reflects the proposal to remove all the administrative details from the Policy document.
- Policy Guidelines "A." is new, again reflecting the removal of administrative details. The remainder consists of edited versions of statements in the existing policy.
- Replacement and Utilization Guidelines This is entirely new, replacing the details in the existing
  policy. The proposed policy is summarized in Table A, Exhibit A, and the old policy is
  summarized in Table 1, Exhibit B. The new guidelines are broken into three sections –
  Replacement, Replacement Funding and Annual Utilization:
  - Replacement guidelines are shown in Table A in the new policy. The thirty-eight categories of vehicle classes in the existing policy, based on the type of vehicle, is simplified with nine classifications of vehicles based on type of use, with common service life characteristics plus one "Special Purpose" classification in which each vehicle and piece of equipment would be addressed specifically. These are typically the "one or two-of-a-kind" pieces with widely varying service lives which may have different measures (such as hours on a generator). In addition, the concept of "service life" is proposed rather than the old set number of years/miles of "first-line" operation. Service life is broken down into three stages:
    - "Green" which is the first phase of use in which preventative maintenance should be typical and the vehicle should perform well in service.
    - "Yellow" is the second phase in which one would anticipate more repairs and the vehicle should be evaluated annually and, perhaps more importantly, before any major repair is made. For example, putting a new engine in a pickup truck that is fourteen years old and has a weak transmission may not make sense. On the

ADDDOVED.		
APPROVED: _		
	Blair King, City Manager	
	Diali King, Oity Manager	

Adopt Revised Fleet Policy March 5, 2008 Page 2

- other hand, repairing a police patrol car and moving it to another use classification may also be appropriate.
- "Red" is the third phase in which the vehicle is over the expected life for the particular use classification. However, it might have useful life in another classification or as a reserve vehicle.
- Replacement funding is addressed separately with an annual charge based on a percentage of the replacement value, as described. The annual charge is in the process of being developed. Staff is examining alternatives given various assumptions as to fund balance available for vehicle replacement, as well as the age and condition of the current fleet. A recommendation will be made as part of the budget. One notable aspect of this annual charge approach is that the charge would stop when the cumulative percentage reaches 100%. This would be an incentive to extend vehicle use, both within the original use classification or in another use.
- Annual utilization is also addressed separately. This refers to the number of miles a vehicle accumulates in a year (or hours for equipment). This aspect of the policy is only indirectly related to replacement but is more directly related to the number of vehicles in the fleet. This criterion needs to be very use and/or vehicle specific and does not lend itself to the broad use classifications described earlier. For example, a building inspector's vehicle, even in busy times, is only driven around town to job sites and the inspector walks to perform the inspection. Clearly that job needs a vehicle, but even when used every day, it will not accumulate many miles. Other vehicles, given their use, can accumulate many miles in a very short amount of time (i.e., street sweepers, transit buses). Conversely, some vehicles may be used very little perhaps it is being kept for emergency or infrequent use, but if it is paid for and costs very little to maintain, then the actual annual utilization is not as important.

As an additional piece of information, the current age of the City's fleet, compared to that in 2003, is shown in Exhibit C. Clearly, the fleet has aged and vehicles are not being replaced per the old policy. As shown on the chart, in 2003, 44 vehicles were one year old or less. In 2007, only 22 were less than one year old. What is not shown on the chart is that approximately 50% of the fleet is past the replacement criteria in the old policy. The proposed policy is intended to be more reflective of reality in terms of how vehicles are actually considered for replacement.

One aspect of vehicle replacement that is not directly addressed in the proposed policy has to do with "green" vehicles. The City has already moved towards use of compressed natural gas fuel for many vehicles and, given various grant and subsidy programs available, this falls under the "lowest cost" aspects of the existing and proposed policies. However, the City could consider a more aggressive approach and, as a matter of policy, acquire more vehicles that use alternative fuels or technology (such as hybrid vehicles). This could be addressed at this time, specifically for vehicles, or addressed with overall policy direction on sustainable practices.

FISCAL IMPACT:	The fiscal	impact of	simply	approving	the policy	is minimal.	The real impact

will be in establishing the replacement ("lease") rates as part of the budget.

**FUNDING AVAILABLE**: Not applicable.

Richard C. Prima, Jr.
Public Works Director

RCP/pmf Attachments cc: Dennis Callahan, Fleet and Facilities Manager

#### Adopted by the Lodi City Council, (date), Resolution #

#### **OBJECTIVES**

- A. To provide safe, dependable, and clean vehicles used by the City in delivering services at the lowest possible cost.
- B. To achieve the maximum utilization of each vehicle in order to keep the overall fleet size to an effective minimum.
- C. To establish overall policy direction regarding the City's fleet for administrative implementation as directed by the City Manager.

#### **POLICY GUIDELINES**

- A. The City Manager is responsible for the management, operation, acquisition, and disposal of City owned and leased vehicles as guided by this policy and shall establish administrative procedures and rules as appropriate.
- B. Requests to increase the size of the City fleet shall be approved by the City Council either through budget process or as appropriate during the course of the fiscal year.
- C. The City Manager is authorized to solicit bids and award contracts for the purchase of approved vehicles costing \$50,000 or less per vehicle. Purchases exceeding \$50,000 per vehicle require the approval of the City Council prior to soliciting and awarding bids.
- D. The City Manager may authorize the sale or disposal of surplus vehicles which have been removed from the City fleet.
- E. The City Council shall specifically approve acceptance of grant funded and donated vehicles. The approval is to include a determination as to whether or not the vehicle shall be included in the replacement program.
- F. City vehicles may not be used for personal business except for nominal, incidental use when the vehicle is assigned to an employee as an integral component of the employee's compensation as specifically authorized by the City Manager. No City vehicles should be taken home except those approved by the City Manager.

#### REPLACEMENT AND UTILIZATION GUIDELINES

- A. Replacement Guidelines are shown in Table A and reflect the range of conditions and circumstances under which each replacement shall be reviewed and approved by the City Manager. Accordingly, the decision to replace a vehicle is to be based on cost of operation, maintenance status, vehicle condition, major repairs anticipated and resale value, not solely due to age/mileage.
- B. Replacement funding is to be provided in the form of an annual "lease rate" or equivalent internal service charge or funding mechanism as established by the City Manager as part of the operating budget of each Department/activity and set aside in replacement funds. Funds for each enterprise/Department shall be tracked. The annual amount shall be a percentage of the anticipated replacement value of the vehicle until the cumulative charge reaches 100%. Charges to third parties for work by City forces shall include all costs of vehicle ownership and the appropriate portion also be placed in the replacement fund.
- C. The City Manager shall, at least bi-annually, formally evaluate the utilization of City vehicles to assist in the evaluation of vehicle replacement, re-use of vehicles within the City fleet, and the need for additional vehicles. Alternative transportation, such as vehicle allowances, paying mileage or rental/lease agreements or use of a vehicle pool, is to be considered before adding additional vehicles to the City's fleet or replacing a City vehicle.

#### **TABLE A**

#### **GUIDELINES FOR REPLACEMENT**

- These guidelines are to guide consideration of vehicle replacement and major repairs. The decision to replace a specific vehicle or piece of equipment will be based on cost of operation, maintenance status, and general vehicle or equipment condition.
- 2) Use Classification indicates the main use; recognizing that a specific vehicle unsuitable for a particular use may be suitable in another classification.
- 3) Service Life is the typical life-cycle of a vehicle within the Use Classification broken down into phases as follows:
  - a. Green: Vehicle is maintained in normal fashion.
  - b. Yellow: In addition to above, vehicle is reviewed annually and prior to embarking on major repairs. Pending the results of the review, the vehicle is either kept in service for another year, removed from service, or repaired and placed back into service.
  - c. Red: Vehicle is beyond preferred service life for that Use Classification and, in addition to above, should be considered high priority for removal from service.
- 4) Removal from service would include replacement if determination is made that need for vehicle still exists. Vehicle shall also be considered for alternate service within the City fleet.
- 5) Use beyond preferred service life includes extended service if previous major repairs extended the useful service life, "reserve" or similar backup type use, or alternate use in another classification within the City fleet.

		Service Life (years)			Anticipated	
	Use Classification	<u>Green</u>	Yellow	Red	Mileage by "Red" Year	Notes
1.	Police Patrol	< 4	4 to 6	> 6	100,000	
2.	Police Undercover	< 3	3 to 8	> 8	80,000	Relatively short service life recognizes need to maintain undercover anonymity and assumes possible use of used vehicles
3.	Police Motorcycles	< 3	3 to 5	> 5	60,000	
4.	Fire Engine	< 10	10 to 25	> 25	150,000	Typically keep reserve engine(s)
5.	General Purpose Transportation	< 8	8 to 10	> 10	120,000	Includes sedans, minivans, compact pickups
6.	Light/Medium Commercial	< 10	10 to 15	> 15	120,000	Generally less than 2 Ton load rating Vans, full-size pickups, light service trucks
7.	Heavy Duty Commercial	< 15	15 to 20	> 20	100,000	May vary with installed equipment Heavy service trucks, dump trucks
8.	Light Transit Buses	< 5	6 to 10	> 10	220,000	Per Federal Transit Administration
9.	Heavy Transit Buses	< 12	12 to 15	> 15	500,000	Per Federal Transit Administration
10.	Special Purpose	Specific to each vehicle/equipment as approved by the City Manager			Includes Fire Ladder Truck, Street Sweeper, Sewer Cleaner, Trailers and other special vehicles and equipment	

# GUIDELINES FOR UTILIZATION/REPLACEMENT TABLE 1

These guidelines are benchmarks to qualify for consideration when developing replacement requirements for City vehicles and equipment. Additionally, the decision to replace a vehicle or piece of equipment will be based on cost of operation, maintenance status, and general vehicle or equipment condition.

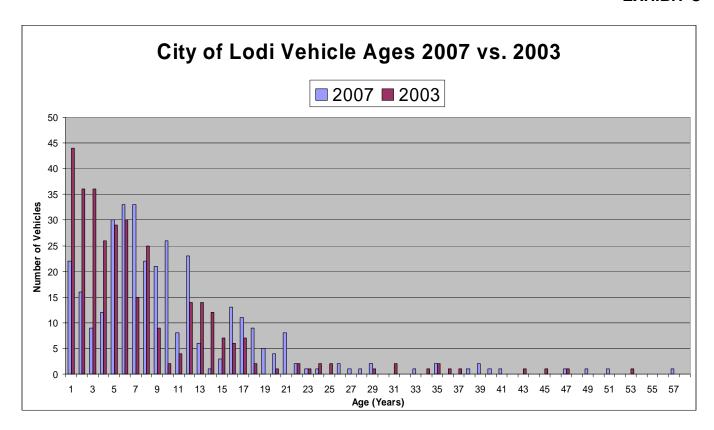
		Rep	lacement Guideline	<u>s</u>	<u>Utilization Guid</u>	elines
		Years of	Miles of	Reserve Period/	Miles	Hours of
		First-Line	First-Line	Secondary Use	Per Year C	Operation
		Operation*	Operation	(if any)	ļ .	Per Year
Ve	hicle/Equipment Classes					
1.	Passenger Vehicle					
	A. Police Patrol	4 years	90,000 miles		15,000	
	B. Police Undercover	4 years	60,000 miles	3 years	6,500	
	C. Other Sedans/Compact Pickups/Minivans	7 years	60,000 miles	•	6,500	
2.	Motorcycles/Scooters					
	A. Police	3 years	45,000 miles		11,250	
	B. Other	7 years	3,000 hours	4 years		300
3.	Emergency Vehicles					
	A. Fire - Utility Vehicles	5 years				
	B. Fire - Pumper	15 years		5 years	İ	
	C. Fire - Aerial Trucks	20 years		5 years	İ	
	D. Other Fire Vehicles	7 years			j	
	E. Other (Electric Utility Service Truck)	8 years	65,000 miles	2 years	6,000	
4.	Light/Medium-Weight Commercial (less than 2 tons)					
	A. Pickups (full-size)	10 years	85,000 miles		6,500	
	B. Vans	10 years	85,000 miles		6,500	
	C. Service Trucks	10 years	85,000 miles		6,500	
	D. Dump Trucks	10 years	85,000 miles		6,500	
	E. Transit Buses	4 years	120,000 miles		22,500	
	F. Other	10 years	85,000 miles		6,500	
5.	Trailers					
	A. General Trailers	15 years				
	B. Specialty Trailers	15 years			-	

## **GUIDELINES FOR UTILIZATION/REPLACEMENT (cont.)**

	<u>Rep</u>	lacement Guideline	<u>Utilization Guidelines</u>		
	Years of	Miles of	Reserve Period/	Miles Hours of	
	First-Line	First-Line	Secondary Use	Per Year Operation	
	Operation*	Operation	(if any)	Per Year	
				ļ	
6. Heavy Commercial (more than 2 tons)					
A. Service Trucks	15 years				
B. Dump Trucks	15 years	85,000 miles		4,250	
C. Street Sweeper	6 years	50,000 miles	6 years	6,250	
D. Aerial Bucket Trucks (high-range)	10 years	00,000 1100	o you.o	0,200	
E. Aerial Bucket Trucks (medium-range)	8 years				
F. Digger/Derrick Trucks	10 years				
G. Transit Buses	5 years	160,000 miles		24,000	
7 Minnellen and Malaine / English and				t	
7. Miscellaneous Vehicles/Equipment					
A. Construction/Material Handling	15 years			ļ	
(items not listed below)	•		_		
B. Mowers	6 years	6,000 hours	6 years	750	
C. Marine (boats)	20 years			ļ 5	
D. Specialty Equipment	00				
E. Slip-Box Paver	20 years				
F. Motor Graders	20 years				
G. Backhoe/Loaders	7 years		8 years		
H. Air Compressors	10 years	2,000 hours	_	150	
Medium Crane     To Unanastian Contains	10 years		5 years		
J. TV Inspection System	8 years		•		
K. Hydro-Jet Sewer Cleaner	6 years		6 years		
L. Rough-Terrain Crane	20 years				
M. Leaf Sweeper	5 years			1	

<sup>\*</sup>Years of operation are measured from the original in-service date. Accordingly, years of City operation will be less for used vehicles and any cost analysis of new versus used vehicles will reflect the lower estimated life of used equipment.

#### **EXHIBIT C**



AGENDA TITLE: Adopt Resolution Amending Memorandum of Understanding between the City of

Lodi and the Lodi City Mid-Management Association for the Period January 1,

2008 through December 31, 2009

**MEETING DATE:** March 5, 2008

PREPARED BY: Deputy City Manager

**RECOMMENDED ACTION**: Adopt Resolution amending Memorandum of Understanding

between the City of Lodi and the Lodi City Mid-Management Association (LCMMA) period January 1, 2008 through December

31, 2009. As directed by City Council through the City Manager, representatives from the LCMMA and City staff began negotiations for the purpose of amending the MOU. The recommended elements of the MOU (as included in the attached tentative agreement, Exhibit A) are as follows:

**BACKGROUND INFORMATION**: The Memorandum of Understanding (MOU) between the City of

Lodi and the LCMMA expired on December 31, 2007. The recommended elements of the MOU (as included in the attached

tentative agreement, Exhibit A) are as follows:

• Effective the first pay period in which January 1, 2008 falls, all classifications shall receive a 5% equity adjustment.

• Effective the first pay period in which January 1, 2008 falls, the following classifications shall receive an additional salary adjustment as indicated:

Assistant Streets & Drainage Manager – 10% salary adjustment

Literacy Services Coordinator – 5% salary adjustment

Streets & Drainage Manager – 5% salary adjustment

- Effective the pay period in which January 1, 2009 falls, employees will receive a cost of living adjustment based upon the consumer price index (CPI-W) San Francisco-Oakland-San Jose. The increase will be no less than 3% and no greater than 5%. If the City of Lodi actual financial statements for the period 07/01/2007 to 06/30/2008 do not show revenue increases of at least 1% (from the previous fiscal year's audited financial statement) then LCMMA and the City of Lodi will reopen negotiations with regard to cost of living adjustments.
- The terms and conditions of this MOU shall continue if effect during the term of this MOU. The parties agree the term is as follows: Two years commencing January 1, 2008 through December 31, 2009.

APPROVED:		_
	Blair King, City Manager	
	Dian rang, Oity Manager	

The City of Lodi agrees to conduct a job analysis for:

Special Services Manager June 30, 2009

Management Analyst I/II September 30, 2008
Water Services Manager December 30, 2008

Building Official March 30, 2009
Supervising Accountant June 30, 2009

 Add language that includes disciplinary actions to be consistent with the City of Lodi Rules for Personnel Administration.

**FISCAL IMPACT**: The current year salary modifications as recommended, would impact the General Fund by approximately \$107,000 in fiscal year 2007-08. In fiscal year 2008-09 the impact would vary. If revenues do not materialize, then the fiscal impact would vary depending on renegotiated terms.

#### **FUNDING AVAILABLE:**

James R. Krueger, Deputy City Manager

Attachments



TO; Dean Gualco FROM: LCMMA

Date: February 14, 2008

Subject: Mid-Management MOU

1.1 Effective the first pay period in which January I, 2008 falls, all classifications shall receive a 5% equity adjustment.

1.2 Effective the first pay period in which January 1, 2008 falls, the following classifications shall receive an additional salary adjustment as indicated:

Assistant Streets & Drainage Manager - 10% salary adjustment

Literacy Services Coordinator - 5% salary adjustment

Streets & Drainage Manager - 5% salary adjustment

- 1.3 Effective the first pay period in which January I, 2009, employees will receive a cost of living adjustment based upon the consumer price index (CPI-W), San Francisco-Oakland-San Jose. The increase will be no less than 3% and no greater than 5%. If the City of Lodi actual financial statements for the period 07/01/2007 to 06/30/2008 do not show revenue increases of at least 1% (from the previous fiscal year's audited financial statement) then LCMMA and the City of Lodi will reopen negotiations with regard to cost of living adjustments.
- 1.4 The terms and conditions of this MOU shall continue in effect during the term of this MOU. The parties agree the term is as follows: Two years commencing January 1, 2008 through December 31, 2009.
- 1.6 The City of Lodi agrees to conduct a job analysis for:

Special Services Manager -

June 30, 2008

Management Analyst I/II

September 30, 2008

Water Services Manager

December 30, 2008

Building Official

March 30, 2009

Supervising Accountant

June 30, 2009

1.7 Add language that includes disciplinary actions will be consistent with the City of Lodi Rules for Personnel Administration submitted November 16, 1994, including but not limited to Section 13.07

SECTION 13.07 PROCESS OF DISCIPLINARY ACTION. The City of Lodi practices a progressive disciplinary process. The process is subject, but not limited to, the considerations in Section 13.04 of these Rules, and shall be implemented on a case-by-case basis. As a general guideline, the process of disciplinary action shall be in the following order:

#### RESOLUTION NO. 2008-\_\_\_

# A RESOLUTION OF THE LODI CITY COUNCIL AMENDING THE MEMORANDUM OF UNDERSTANDING WITH THE LODI CITY MID-MANAGEMENT ASSOCIATION

\_\_\_\_\_\_

WHEREAS, representatives from the City of Lodi and Lodi City Mid-Management Association (LCMMA) have bargained in good faith for the purpose of amending certain articles of the Memorandum of Understanding (MOU).

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that it does hereby amend the MOU as follows:

#### Article I-Salary

#### 1.1 Removed and replaced as follows:

Effective the pay period in which January 1, 2008, falls, all classifications shall receive a 5% equity adjustment.

#### 1.2 Removed and replaced as follows:

Effective the pay period in which January 1, 2008, falls, the following classifications shall receive an additional salary adjustment as indicated:

June 30, 2009

Special Services Manager
 Management Analyst I/II
 Water Services Manager
 Building Official
 June 30, 2008
 September 30, 2008
 December 30, 2008
 March 30, 2009

#### 1.3 Removed and replaced as follows:

Supervising Accountant

Effective the pay period in which January 1, 2009, falls, employees will receive a cost of living adjustment based upon the consumer price index (CPI-W), San Francisco-Oakland-San Jose. The increase will be no less than 3% and no greater than 5%. If the City of Lodi actual financial statements for the period 07/01/2007 to 06/30/2008 do not show revenue increases of at least 1% (from the previous fiscal year's audited financial statement) then LCMMA and the City of Lodi will reopen negotiations with regard to cost of living adjustments.

#### 1.5 Removed and replaced as follows:

The terms and conditions of this MOU shall continue in effect during the term of this MOU. The parties agree the term is as follows: Two years commencing January 1, 2008 through December 31, 2009.

#### Miscellaneous

The City of Lodi agrees to conduct a job analysis for:

Special Services Manager June 30, 2008

Management Analyst I/II September 30, 2008
Water Services Manager December 30, 2008

Building Official March 30, 2009
Supervising Accountant June 30, 2009

Add language that includes disciplinary actions will be consistent with the City of Lodi Rules for Personnel Administration submitted November 16, 1994, including but not limited to Section 13.07.

Date: March 5, 2008

\_\_\_\_\_\_

I hereby certify that Resolution No. 2008-\_\_ was passed and adopted by the Lodi City Council in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk

2008-\_\_\_\_

AGENDA TITLE:	Adopt Resolution Approving Compensation Adjustment for Unrepresented Mid- Managers								
MEETING DATE:	March 5, 2008	March 5, 2008							
PREPARED BY:	Deputy City Ma	anager							
RECOMMENDED A		Adopt Resolu unrepresented r		compensation	adjustment	for			
similar compensation with the Mid-Manag requested that Coumanagers (Human Attorney, and Managers)	n adjustments in ement Associat uncil approve t Resources Man	Management Assalaries general the past. Unreption as they are the following cotager, Budget Manager, Budget Ma	typically confider ompensation adju	A). Unrepresent argaining unit a ses are excluded ntial employees stments for un	ted mid-manag nd have receiv from participat . Therefore, it represented m	ers /ed ing i is nid-			
Effective Date			Equity Adjustmen	nt					
Pay period in which January 1, 2008 falls Pay period in which January 1, 2009 falls			5% equity adjustr CPI-W Index – than 5%. If fin 2007-2008 show (from previous statement)	no less than 3% ancial statemen revenue increas	nt for fiscal years of at least 1	ar %			
FISCAL IMPACT: Fund by approximate	ely \$17,000 in fis	scal year 2007-0			npact the Gene	eral			

Blair King, City Manager

APPROVED: \_\_

#### RESOLUTION NO. 2008-\_\_\_

# A RESOLUTION OF THE LODI CITY COUNCIL APPROVING EQUITY ADJUSTMENT FOR UNREPRESENTED MID-MANAGERS

\_\_\_\_\_\_

WHEREAS, the City has completed negotiations with Lodi City Mid-Management Association (LCMMA). Unrepresented mid-managers salaries generally align to this bargaining unit and have received similar compensation adjustments in the past; and

WHEREAS, it is recommended that Council approve the following compensation adjustments for unrepresented mid-managers (Human Resources Manager, Budget Manager, Financial Services Manager, Deputy City Attorney, and Management Analyst I/II):

Effective Date	Equity Adjustment
Pay period in which January 1, 2008 falls	5% equity adjustment
Pay period in which January 1, 2009 falls	CPI-W Index – no less than 3% and no greater than 5%. If financial statement for fiscal year 2007-2008 show revenue increases of at least 1% (from previous fiscal year's audited financial statement)

Date: March 5, 2008

\_\_\_\_\_\_\_

I hereby certify that Resolution No. 2008-\_\_ was passed and adopted by the Lodi City Council in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk

2008-\_\_\_\_

#### **AGENDA ITEM K-06**



**AGENDA TITLE:** Adopt a Resolution Approving City's Internet Website Policy

MEETING DATE: March 5, 2008

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt a Resolution approving the City's Internet Website Policy.

**BACKGROUND INFORMATION:** The City has maintained one or more Internet Websites for the past

11 years, including www.lodi.gov, www.hutchinsstreetsguare.com,

and www.lodielectric.com. All of these sites are "owned" by the City

of Lodi, which is ultimately responsible for their content. The central purpose of these Websites is to "advance the public's health, safety and welfare by providing information for and interacting with Lodi residents, businesses, and visitors."

The City's Websites have become popular venues for obtaining documents, downloading official forms, viewing the City Council meeting Webcasts, previewing meeting agendas and minutes, accessing resources such as Mapquide and public documents, viewing current job openings, accessing the Municipal Code, and obtaining election information. The sites have also become valuable marketing tools in the City's efforts to promote tourism and economic development.

The City's homepage receives an average of 2,000 unique visits per day.

Lodi's Electric Utility and Community Center (Hutchins Street Square) also maintain individual Websites. The public may browse current events, purchase performance tickets, get electric rate information, among other things, at these sites.

Over the years the City has not had an official Website policy in place, but has instead made decisions concerning its Internet properties on an ad hoc basis. Staff believes the City needs to formalize and post the policies governing its Websites. The proposed policy document includes Disclosure, Privacy, External Link, and Calendar policies in addition to a "legal notice." It is the intent of staff to post a link to the City's Internet Website policies on the various City Websites, once approved by Council.

The City regularly receives requests from third parties to include hyperlinks to external Websites. In the past the City has largely declined such requests on the premise that the City cannot control the content of these sites. A seemingly benign Website could be revised to contain distasteful material. In addition, should it begin the practice, the City might not be able to refuse links it deems inappropriate. Featuring an external link may also imply approval, endorsement or sponsorship of that site, which would be unintentional but unavoidable. Managing these links would also contribute to the ongoing burden of site maintenance.

ADDDOVED		
APPROVED: _		
	Blair King, City Manager	
	Diali King, City Managei	

Other uses of the Website are limited because Lodi has a "dot-gov" web address. The federal General Services Administration (GSA) manages "dot-gov" sites and prohibits them from advertising for private individuals, firms or corporations, or imply in any manner that the government endorses or favors any specific commercial products, commodity or service. Additionally, www.lodi.gov is not permitted to link or refer to Web sites created or operated by a campaign or any campaign entity or committee. Doing any of the above would likely result in the GSA revoking the domain name, forcing the city to register a new one with a new suffix such as ".us" (managed by the U.S. Department of Commerce), or ".com." Domain names such as www.ci.lodi.ca.us are more cumbersome, and the ".us" suffix is not limited to government sites. The GSA is protective of .gov domain names to assure the public that these Websites are genuine government sites and provide the best possible service to the public.

Accordingly, staff is recommending the City Council adopt a no-link policy affecting all commercial and non-profit sites, with the following exceptions: 1) Sites that offer software the City Manager deems best suited for making the city Website more accessible and functional to visitors, 2) other governmental sites, 3) city-funded entities that provide services on the city's behalf, such as the Lodi Conference and Visitors Bureau and, 4) sites that assist potential job candidates and potential contractors to determine industry standards, specifications and qualifications required by the city.

California cities have myriad Website policies. Some cities allow limited links, such as those permitted in the proposed policy, and others are less-restrictive. Others without .gov domain names provide links through paid sponsorships, and some cities allow links to private utilities, museums and nonprofits. This proposed policy has been reviewed with the City Council on two occasions. The Lodi Public Library is not affected by this policy.

FISCAL IMPACT:	None.		
FUNDING:	N/A		
		James R. Krueger Deputy City Manager	

Prepared by:

Steve Mann, Information Systems Manager Jeff Hood, Communications Specialist

JK/SM/JH

#### RESOLUTION NO. 2008-

#### A RESOLUTION OF THE LODI CITY COUNCIL APPROVING CITY OF LODI INTERNET WEBSITE POLICY

\_\_\_\_\_\_

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the City of Lodi Internet Website Policy, as shown on Exhibit A attached hereto.

Dated: March 5, 2008

I hereby certify that Resolution No. 2008-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2008, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL City Clerk

## **City of Lodi Internet Website Policies**

#### **Contents**

- Disclosure Policy
- Privacy Policy
- External Link Policy
- City Calendar
- Legal Notice

#### **Purpose**

The purpose of the City of Lodi's Website is to advance the public's health, safety and welfare by providing information for and interacting with Lodi residents, businesses, and visitors. This policy is applicable to the City Website which is defined as any internet or intranet web page which represents itself as the City or any of its departments.

#### **Disclosure Policy**

The following Disclosure Policy explains the City of Lodi's (City) policy regarding any information that may be acquired when visiting the City's official website <a href="www.Lodi.gov">www.ci.lodi.ca.us</a>, <a href="www.hutchinsstreetsquare.com">www.lodielectric.com</a> (each domain, alone and collectively, is considered the City website, which may expand or change from time to time). By using the City website, you agree, without limitation or qualification, to be bound by this Disclosure Policy or any other privacy or data collection policy applicable to any individual City website. This disclosure makes no warranties or representations for any websites that are not one of the aforementioned domains.

- 1) The City's web servers are maintained to provide public access to City information via the Internet. The City's web services and the content of its web servers and databases are updated on a continual basis. While the City attempts to keep its web information accurate and timely, the City neither warrants nor makes representations or endorsements as to the quality, content, accuracy, or completeness of the information, text, graphics, hyperlinks, and other items contained on this server or any other server. Site materials have been compiled from a variety of sources, and are subject to change without notice from the City as a result of updates and corrections. To the extent permitted by law, commercial use of web materials is prohibited without the written permission of the City.
- 2) The City does not warrant that the functions contained in the materials will be uninterrupted or error-free, or that defects will be promptly corrected.
- 3) All service marks and trademarks mentioned herein are the property of their respective owners. The City retains copyright on all text, graphic images, and other content. This means that you may not do the following, unless you have written permission from the City:
  - a) modify and/or re-use text, images or other web content from a City server,
  - b) distribute the City's web content, and
  - c) "mirror" the City's information on a non-City server.
- 4) Some of the hyperlinks on this and subsequent pages may lead to resources outside the City. The presence of these hyperlinks should not be construed as an endorsement by the City of

these sites or their content. The City is not responsible for the content or the privacy policies of any such external hyperlink.

- 5) Communications made through e-mail and messaging systems shall in no way be deemed to constitute legal notice to the City or any of its agencies, officers, employees, agents, or representatives, with respect to any existing or potential claim or cause of action against the City or any of its agencies, officers, employees, agents, or representatives, where notice to the City is required by any federal, state or local laws, rules, or regulations.
- 6) The City of Lodi is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations, including equal access to communications, will be provided upon request. Requests for reasonable accommodations, with regard to equal access to communications, should be directed to the City of Lodi Information Systems Help Desk at (209) 333-5560, between 8 a.m. and 12 noon, and 1 p.m. and 5 p.m. Monday through Friday.
- 7) The City is neither responsible nor liable for any viruses or other contamination of your system, nor for any delays, inaccuracies, errors or omissions arising out of your use of the site or with respect to the material contained on the site, including without limitation, any material posted on the site. This site and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the site and/or the materials contained on the site whether the materials contained on the site are provided by the City, or a third party.
- 8) The City website employs industry-standard methods to monitor network traffic to identify unauthorized attempts to upload or change information or otherwise cause damage. The City uses reasonable precautions to keep the personal information disclosed to the City secure.
- 9) The City website is coordinated and maintained by the Administrative Services Department of the City. Web content is produced by each department and division within the City. The Information Systems Division of the Administrative Services Department may be contacted by mail at PO Box 3006, Lodi, California 95241-1910, by telephone at (209) 333-5560, or by e-mail at <a href="https://www.website.com/websites/websites/">WebHelp@Lodi.gov</a>.

#### **Privacy Policy**

The following Privacy Policy explains the City of Lodi's (City) policy regarding any information you may supply to us when visiting the City's official website <a href="www.Lodi.gov">www.Lodi.gov</a>, <a href="www.ci.lodi.ca.us">www.ci.lodi.ca.us</a>, <a href="www.hutchinsstreetsquare.com">www.lodielectric.com</a> (each domain, alone and collectively, is considered the City website, which may expand or change from time to time). By using the City site, you agree, without limitation or qualification, to be bound by this Privacy Policy or any other disclosure or data collection policy applicable to any individual City website. This disclosure makes no warranties or representations for any websites that are not one of the aforementioned domains.

1) On certain occasions, the public has opportunities to share personal information online with the City in order to facilitate better correspondence and service. This information includes but is not limited to e-mail addresses, responses to surveys, registering for services and new services to be created. The City of Lodi will not sell any information provided through this website. Nevertheless, information received by the City online is a public record [except Lodi Public Library patron registration and circulation records are exempt (Sec. 6254 & 6267)] and may be subject to disclosure under the provisions of the California Public Records Act (Gov't. Code § 6250 et seq.). Credit card information will not be disclosed.

- 2) The City only requires the personal information necessary in order to provide effective service. At times you may be offered an opportunity to provide the City with additional information on a voluntary basis, this additional information enables the City to provide you with improved service.
- 3) Using e-mail addresses provided at registration or otherwise, users are giving the City permission to periodically send out e-mail newsletters and promotional email to our users about website updates, and product and service information offered by the City. Lodi Public Library registered borrowers will receive library information and newsletters electronically only if they give written permission at the time of registration or on a subsequent visit to the library.
- 4) Users may indicate that they do not wish to receive e-mail information from the City. Upon request, the City will remove users, and their information, from the City database or permit them to elect not to receive any further e-mail newsletters or contact.
- 5) The City encourages parents to go on-line with their children. One of the City services on-line is to provide educational information about Lodi; therefore, children are not restricted from visiting the City site. The City urges children to get permission from their parents or guardians before giving any information online.
- 6) The City website employs industry-standard methods to monitor network traffic to identify unauthorized attempts to upload or change information or otherwise cause damage. The City uses reasonable precautions to keep the personal information disclosed to the City secure.
- 7) The City makes reasonable efforts to protect the personal information shared with us. For example, if you make an online purchase with the City, your credit card number and personal information is encrypted to protect this information while it is being transmitted. The City limits access to your personal information to only those employees who need it to perform the service requested.
- 8) The City website is coordinated and maintained by the Administrative Services Department of the City. Site content is produced by each department and division within the City. The Information Systems Division of the Administrative Services Department may be contacted my mail at P.O. Box 3006, Lodi, California 95241-1910, by telephone at (209) 333-5560, or by e-mail at <a href="WebHelp@Lodi.gov.">WebHelp@Lodi.gov.</a>

#### **External Link Policy**

The City of Lodi does not permit the establishment of links to external sites belonging to commercial or non-profit organizations, with the following exceptions: Sites that offer tools the City Manager deems best-suited for making the Website more accessible and functional, links to other governmental agencies, city-funded entities that provide services on the city's behalf, and websites that provide specifications and standards to assist potential contractors or potential employees. The Lodi Public Library may carry external links as approved by the Library Services Director.

#### City Calendar

The City Calendar is a service offered to website visitors as part of the main City website. The purpose of the City Calendar is to provide a central location for website visitors to easily find information, dates and times of City meetings, Holidays, City Sponsored or Co-Sponsored Festivals and Events, Parks & Recreation Department Activities and Library Department Programs and Events.

The City Calendar is designed to be a service to website visitors. The City Calendar is not a public forum or community calendar. The calendar is specifically for the use of City Staff to post events that are in direct support of staff's respective department's mission statement. Calendar items are

considered website content and thus subject to approval of the Information Systems Manager, or his designee, with dispute resolution resting with the City Manager.

From time to time, categories may be added or deleted as City Staff finds and identifies new Calendar item categories or finds that existing categories are obsolete. To the best of the ability of City Staff, calendar items are correct and timely. However, the City Calendar is not intended to serve as official notice of meetings or events. Users should confirm information regarding events with the posting department.

#### **Legal Notice**

**Exclusive Use:** The City of Lodi website and web servers are maintained for the exclusive use of the City to communicate matters of general public interest using the Internet. While the City attempts to keep its website accurate and timely, the City neither warrants nor makes representations or endorsements as to the accuracy, quality, content or completeness of the content on the website. Web content is subject to change without notice from the City as a result of updates and corrections.

No person or entity may do any of the following without written permission from the City Manager of the City of Lodi:

- (a) modify and/or reuse text, images or other web content from the City's website
- (b) distribute the City's web content
- (c) "mirror" the City's information on a non-City server

**Accessibility:** The City of Lodi is committed to upholding the Americans with Disabilities Act (ADA). Reasonable accommodations regarding equal access to information will be provided upon request to the City of Lodi Administrative Services at (209) 333-6700, Monday through Friday from 8 am to 5 pm. Although the City's website content meets certain accessibility standards, the City cannot claim that its website fully meets either ADA or Section 508 accessibility standards.

**Hyperlinks (Links):** Some of the links made available to you through the City of Lodi's website will allow you to leave the City's site. Please be aware that the Internet sites available through these links, and the materials that you may find at those sites are not provided by, endorsed by or are under the control of the City. Therefore, the City cannot and does not make any representation to you about these sites or the materials available on the sites. The fact that you may be able to access these additional sites from the City's website is not an endorsement or recommendation to you by the City of any of these sites or any material found there. The City is providing these links only as a convenience to you, and your access to these additional sites is done at your own risk.

**Commercial Use:** To the extent permitted by the Public Records Act and otherwise legally permissible, commercial use of the City of Lodi materials, content and information is explicitly prohibited without the written permission of the City. All branding and trademarks mentioned herein are the property of their respective owners.

**Copyright:** The City retains copyright and trademark on all text, graphic images, and other content, unless otherwise noted. The City Seal is a trademark of the City of Lodi. The City of Lodi retains all intellectual property rights including copyrights on all text, graphic images and other content. This means that the following acts or activities are prohibited without prior written permission from the City of Lodi:

- (a) modify and/or re-use text, images or other web content from a City server
- (b) distribute the City's web content
- (c) "mirror" the City's information on a non-City server

**Legal Notice/Public Comment:** Communications made using electronic mail (e-mail), including mail to: links, and messaging systems shall in no way be deemed to constitute public comment or legal notice to the City of Lodi or any of its agencies, officers, employees, agents, or representatives, with respect to any existing or potential claim or cause of action regarding the City

or any of its agencies, officers, employees, agents or representatives, where notice to the City is required by any federal, state or local laws, rules, or regulations.

Warranties: The City of Lodi website and all materials contained therein are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitation, warranties of title or implied warranties of fitness for a particular purpose. The City is neither responsible nor liable for any viruses or contaminations of a web visitor's hardware, software, peripherals, or properties nor for any delays, inaccuracies, errors, or omissions resulting from use of or with respect to the material contained on its website, including without limitation but not limited to, any material posted on or linked to or from the City of Lodi website. The City is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use the site and/or the materials contained on the site whether the materials contained on the site are provided by the City of Lodi, or a third party.

Reviewed and updated September 26, 2007



AGENDA TITLE: (	City	Council	Participa	ition in	Review	of	Applicants	for	Police	Chief	and	Pub	lic
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Works Director

**MEETING DATE:** March 5, 2008

PREPARED BY: City Manager

**RECOMMENDED ACTION**: Designate one Council Member to assist the City Manager in the

selection of the Director of Public Works and two Council Members

to assist in the selection of Chief of Police.

FISCAL IMPACT: Lodi Municipal Code Section 2.12.060 provides the City Manager

with the authority to hire and appoint heads of departments. It is the experience of the City Manager that when it is practical and

convenient, that the selection process for certain department heads is enriched with the partnership of Council Members. Towards this end, the Manager respectfully requests that the Council select one member to work with the Manager in the review of applicants for the Director of Public Works and two members of the Council to review and participate in the Chief of Police selection process.

The closing date has passed for the Director of Public Works. It is felt that one member of the Council will be adequate to assist with this position. The closing date for the Chief of Police is March 11, two members of the Council would be appropriate for this position.

FUNDING:	Not applicable.
FISCAL IMPACT:	None related directly to this action.
	Blair King, City Manager

APPROVED: \_\_\_\_\_

Blair King, City Manager

#### **AGENDA ITEM K-08**



**AGENDA TITLE:** Approval of Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$183,932.95) **MEETING DATE:** March 5, 2008 City Council Meeting PREPARED BY: City Attorney's Office **RECOMMENDED ACTION:** That the City Council approve for payment expenses incurred by outside Counsel/Consultants related to the Environmental Abatement litigation in the total amount of \$183,932.95. BACKGROUND INFORMATION: Listed below are invoices from the City's outside counsel, Folger, Levin & Kahn and Miscellaneous Invoices for services incurred relative to the Environmental Abatement Program litigation that are currently outstanding and need to be considered for payment. Folger Levin & Kahn - Invoices Distribution Water Acct. Matter No. Invoice No. Date Description Amount Hartford v. Col. 8003 106887 01/31/08 460.41 8008 106888 01/31/08 Col v. Envision 169.525.29 133276 12/31/07 Hemming Morse, Inc. 4,888.75 Hemming Morse, Inc. 133465 01/31/08 9,058.50 183.932.95 **FISCAL IMPACT:** All expenses will be paid out of the Water Fund. FUNDING AVAILABLE: Water Fund \$183,932.95 Approved: Kirk Evans, Budget Manager

APPROVED:

Blair King, City Manager

Stephen Schwabauer, City Attorney